

**ASSEMBLY BILL**

**No. 3082**

**Introduced by Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Bates, Hancock, Jackson, Laird, Lieber, Longville, Montanez, Pacheco, and Steinberg)**

March 11, 2004

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An act to amend Sections 511.3, 853, 2241.5, 2260, 3651, 4052, 4311, 4409, 4980.90, 7026.1, 7028, 12107.1, 13570, 17529.1, 17538.45, 17550.30, 17593, 18824, 18897.73, 22575, and 25503.4 of the Business and Professions Code, to amend Sections 51.10, 56.26, 800.100, 1102.16, 1103, 1542, 1785.30, 1786.24, 1789.21, 1798.83, 1798.85, 1799.1b, 1812.701, 1865, 2945.3, 2982, 2985.8, and 2988.9 of, and to amend and renumber Sections 1747.8 and 1747.9 of, the Civil Code, to amend Sections 715.010, 995.640, 1021.8, 1563, 1822.60, and 2023 of the Code of Civil Procedure, to amend Sections 2207, 13401.5, and 14010 of, and to amend and renumber Section 17655 of, the Corporations Code, to amend Sections 8266.1, 8813, 8825, 17077.45, 17334, 17360, 22852, 22854, 27403, 32265, 42238.41, 44279.2, 44328, 44735, 44830.3, 47634, 48200.7, 49414.5, 49452.6, 52015, 52054, 52055.615, 52055.625, 52055.655, 52128, 60061.8, 60640, 64201, 66271.8, 67359.13, 88033, 89539.2, 94779, 94901, 94944, 94990, and 99235 of the Education Code, to amend Sections 11105, 14310, and 18541 of the Elections Code, to amend Sections 917 and 956.5 of the Evidence Code, to amend Sections 4962 and 17600 of the Family Code, to amend Sections 216.3, 258, 645, 690, 777.5, 867, 1753, 1807, 1908, 3804, 14401, and 50122 of the Financial Code, to amend Sections 206, 1570, 1572, 1613, 7149.2, 7361, 7362, and 12011 of the Fish and Game Code, to amend Sections 6047.4, 6047.82, 27680, 27681, 27686, 27690, 30801, 52489, 65520, 66572, 66663, 74028,

78302, and 78690 of the Food and Agricultural Code, to amend Sections 912.8, 1091.4, 6254, 6254.17, 7072, 8220, 8592.4, 8869.84, 8880.325, 10205.1, 12012.30, 12080.3, 12598, 13995.20, 13995.40, 13995.42, 13995.58, 13995.65, 13995.74, 13997.1, 14055.2, 18215, 19063.1, 19582.1, 19826, 20035.2, 20035.3, 20035.4, 20035.10, 20235, 22013.97, 22825.12, 25358, 29550, 30061, 31520.5, 31755, 31762, 31776.3, 50061, 53088.2, 53895.5, 54222, 63049.4, 65919, 68085.5, 68086, 69927, 71806, 71828, 77202, and 95000 of, and to amend and renumber Sections 6215 and 20035.5 of, the Government Code, to amend Sections 138.6, 444.20, 1255, 1367.04, 1375.7, 1569.30, 1569.70, 1596.816, 1794.04, 11758, 13108.5, 17037.5, 17921.9, 17991, 25117.4.1, 25121.3, 25160.6, 25184.1, 25201.1, 25210.6, 25360.6, 25501, 32111, 33320.8, 33492.40, 39011.5, 39614, 39661, 40500.5, 40724.6, 41514.1, 41855.6, 50517.9, 51615, 53533, 101625, 104558, 106010, 115005, 121010, 127670, 127671, 127760, and 128401 of, to amend the heading of Chapter 8 (commencing with Section 127670) of Part 2 of Division 107 of, and to amend and renumber Sections 35987, 35988, 35989, 35990, and 35991 of, the Health and Safety Code, to amend Sections 881, 1063.53, 1067.08, 1104.9, 1280.7, 1776, 1861.025, 10113.2, 10133.56, 10133.8, 10178.4, 10764, 12144, 12671, 12693.55, 12975.7, 12975.8 of, and to amend and renumber Section 10089.45 of, the Insurance Code, to amend Sections 98.2, 141, 143.2, 2140.5, 2160.1, 2190, 2190.2, 2200, 2210, 3099, 3600.1, and 7304 of, and to amend and renumber Section 4610 of, the Labor Code, to amend Sections 186.8, 330b, 330.7, 597b, 597c, 1372, 1463.010, 6245, 11171, 11502, 12021, and 13864 of the Penal Code, to amend Sections 858, 6242, 19403, 20114.5, and 21320 of the Probate Code, to amend Sections 6106.5 and 10295.3 of the Public Contract Code, to amend Sections 2755, 2802, 3305, 3324, 5079.50, 14509.3, 14552.5, 14581, 30610.3, 36725, 40000, 41732, 42330, 42463, 42475.2, 45000, 45010, 50000, and 71210 of, and to amend the headings of Article 1 (commencing with Section 32630), Article 2 (commencing with Section 32633), Article 3 (commencing with Section 32639), Article 4 (commencing with Section 32657), and Article 5 (commencing with Section 32661) of Division 22.9 of, the Public Resources Code, to amend Sections 280.5, 353.2, 372, 374, 377.2, 379.6, 396, 399.12, 1701.3, and 21670.1 of the Public Utilities Code, to amend Sections 97.313, 155.20, 3691.6, 6077, 6361.1, 9405, 17132.6, 18407, 19164, 19179, 19777, 23036, 23736.1, 46622, and 55337 of the Revenue and Taxation Code, to amend Sections 104.7,



3114.5, 5101, 8833, 10100.2, and 31071 of the Streets and Highways Code, to amend Sections 2610, 3305, and 10200 of the Unemployment Insurance Code, to amend Sections 2813.5, 3072, 9250.13, 9400.1, 9400.3, 9951, 11515.2, 12509, 22100, 25803, 31032.1, 34620, and 35401.7 of the Vehicle Code, to amend Sections 1552, 13269, 13368, 13387, 13610, 13611, 13611.5, 36153, 72303, 78688, 79532, and 79561.5 of, and to amend and renumber Section 12749.95 of the Water Code, to amend Sections 779, 1000.7, 1703, 5657, 7200.06, 10063, 11025, 11052.5, 11373, 11468.6, 14016.5, 14043.75, 14087.6, 14105.981, 14123.25, 14132.22, 14133.3, 14148.91, 14408, 15657, 15657.03, 16121.05, 16501.6, and 18358 of the Welfare and Institutions Code, and to amend Section 1 of Chapter 68 of, and Section 13 of Chapter 673 of, the Statutes of 2003, relating to the maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

AB 3082, as introduced, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make technical, nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 511.3 of the Business and Professions
- 2 Code is amended to read:
- 3 511.3. (a) When a contracting agent sells, leases, or transfers
- 4 a health-provider's contract to a payor, the rights and
- 5 obligations of the provider shall be governed by the underlying
- 6 contract between the health care provider and the contracting
- 7 agent.
- 8 (b) For purposes of this section, the following terms shall have
- 9 the following meanings:
- 10 (1) "Contracting agent" has the meaning set forth in paragraph
- 11 (2) of subdivision (d) of Section 511.1.

1 (2) “Payor” has the meaning set forth in paragraph (3) of  
2 subdivision (d) of Section 511.1.

3 SEC. 2. Section 853 of the Business and Professions Code is  
4 amended to read:

5 853. (a) The Licensed Physicians and Dentists from Mexico  
6 Pilot Program is hereby created. This program shall allow up to 30  
7 licensed physicians specializing in family practice, internal  
8 medicine, pediatrics, and obstetrics and gynecology, and up to 30  
9 licensed dentists from Mexico to practice medicine or dentistry in  
10 California for a period not to exceed three years. The program shall  
11 also maintain an alternate list of program participants.

12 (b) The Medical Board of California shall issue three-year  
13 nonrenewable licenses to practice medicine to licensed Mexican  
14 physicians and the Dental Board of California shall issue  
15 three-year nonrenewable permits to practice dentistry to licensed  
16 Mexican dentists.

17 (c) Physicians from Mexico eligible to participate in this  
18 program shall comply with the following:

19 (1) Be licensed, certified or recertified, and in good standing in  
20 their medical specialty in Mexico. This certification or  
21 recertification shall be performed, as appropriate, by the Consejo  
22 Mexicano de ~~Ginecología~~ *Ginecología y Obstetricia*, A.C., the  
23 Consejo Mexicano de ~~Certificación~~ *Certificación en Medicina*  
24 Familiar, A.C., the Consejo Mexicano de Medicina Interna, A.C.,  
25 or the Consejo Mexicano de ~~Certificación~~ *Certificación en*  
26 ~~Pediatría~~ *Pediatría*, A.C.

27 (2) Prior to leaving Mexico, each physician shall have  
28 completed the following requirements:

29 (A) Passed the board review course with a score equivalent to  
30 that registered by United States applicants when passing a board  
31 review course for the United States certification examination in  
32 each of his or her specialty areas and passed an interview  
33 examination developed by the National Autonomous University  
34 of Mexico (UNAM) for each specialty area. Family practitioners  
35 who shall include obstetrics and gynecology in their practice, shall  
36 also be required to have appropriately documented, as specified by  
37 United States standards, 50 live births. Mexican obstetricians and  
38 gynecologists shall be fellows in good standing of the American  
39 College of Obstetricians and Gynecologists.

(B) (i) Satisfactorily completed a six-month orientation program that addressed medical protocol, community clinic history and operations, medical administration, hospital operations and protocol, medical ethics, the California medical delivery system, health maintenance organizations and managed care practices, and pharmacology differences. This orientation program shall be approved by the Medical Board of California to ensure that it contains the requisite subject matter and meets appropriate California law and medical standards where applicable.

(ii) Additionally, Mexican physicians participating in the program shall be required to be enrolled in adult English as a Second Language (ESL) classes that focus on both verbal and written subject matter. Each physician participating in the program shall have transcripts sent to the Medical Board of California from the appropriate Mexican university showing enrollment and satisfactory completion of these classes.

(C) Representatives from ~~the National Autonomous University of Mexico (UNAM)~~ *UNAM* in Mexico and a medical school in good standing or a facility conducting an approved medical residency training program in California shall confer to develop a mutually agreed upon distant learning program for the six-month orientation program required pursuant to subparagraph (B).

(3) Upon satisfactory completion of the requirements in paragraphs (1) and (2), and after having received their three-year nonrenewable medical license, the Mexican physicians shall be required to obtain continuing education pursuant to Section 2190 ~~of the Business and Professions Code~~. Each physician shall obtain an average of 25 continuing education units per year for a total of 75 units for a full three years of program participation.

(4) Upon satisfactory completion of the requirements in paragraphs (1) and (2), the applicant shall receive a three-year nonrenewable license to work in nonprofit community health centers and shall also be required to participate in a six-month externship at his or her place of employment. This externship shall be undertaken after the participant has received a license and is able to practice medicine. The externship shall ensure that the participant is complying with the established standards for quality assurance of nonprofit community health centers and medical practices. The externship shall be affiliated with a medical school

1 in good standing in California. Complaints against program  
2 participants shall follow the same procedures contained in the  
3 Medical Practice Act (Chapter 5 (commencing with Section  
4 2000)).

5 (5) After arriving in California, Mexican physicians  
6 participating in the program shall be required to be enrolled in  
7 adult ~~English as a Second Language (ESL)~~ *ESL* classes at  
8 institutions approved by the Bureau of Private Post Secondary and  
9 Vocational Education or accredited by the Western Association of  
10 Schools and Colleges. These classes shall focus on verbal and  
11 written subject matter to assist a physician in obtaining a level of  
12 proficiency in English that is commensurate with the level of  
13 English spoken at community clinics where he or she will practice.  
14 The community clinic employing a physician shall submit  
15 documentation confirming approval of an ESL program to the  
16 Medical Board of California for verification. Transcripts of  
17 satisfactory completion of the ESL classes shall be submitted to  
18 the ~~Medical Board of California~~ *board* as proof of compliance with  
19 this provision.

20 (6) (A) Nonprofit community health centers employing  
21 Mexican physicians in the program shall be required to have  
22 medical quality assurance protocols and either be accredited by the  
23 Joint Commission on Accreditation of Health Care Organizations  
24 or have protocols similar to those required by the Joint  
25 Commission on Accreditation of Health Care Organizations.  
26 These protocols shall be submitted to the Medical Board of  
27 California prior to the hiring of Mexican physicians.

28 (B) In addition, after the program participant successfully  
29 completes the six-month externship program, a free standing  
30 health care organization that has authority to provide medical  
31 quality certification, including, but not limited to, health plans,  
32 hospitals, and the Integrated Physician Association, ~~shall be~~ *is*  
33 responsible for ensuring and overseeing the compliance of  
34 nonprofit community health centers medical quality assurance  
35 protocols, conducting site visits when necessary, and developing  
36 any additional protocols, surveys, or assessment tools to ensure  
37 that quality of care standards through quality assurance protocols  
38 are being appropriately followed by physicians participating in the  
39 program.



(7) Participating hospitals shall have the authority to establish criteria necessary to allow individuals participating in this three-year pilot program to be granted hospital privileges in their facilities.

(8) The Medical Board of California shall provide oversight review of both the implementation of this program and the evaluation required pursuant to subdivision (j). The ~~Board~~ *board* shall consult with the medical schools applying for funding to implement and evaluate this program, executive and medical directors of nonprofit community health centers wanting to employ program participants, and hospital administrators who will have these participants practicing in their hospital, as it conducts its oversight responsibilities of this program and evaluation. Any funding necessary for the implementation of this program, including the evaluation and oversight functions, shall be secured from nonprofit philanthropic entities. Implementation of this program may not proceed unless appropriate funding is secured from nonprofit philanthropic entities. The ~~Medical Board of California~~ *board* shall report to the Legislature every January during which the program is operational regarding the status of the program and the ability of the program to secure the funding necessary to carry out its required provisions. Notwithstanding Section 11005 of the Government Code, the board may accept funds from nonprofit philanthropic entities. The board shall, upon appropriation in the annual Budget Act, expend funds received from nonprofit philanthropic entities for this program.

(d) (1) Dentists from Mexico eligible to participate in this program shall comply with the following requirements or the requirements contained in paragraph (2):

(A) Be graduates from the National Autonomous University of Mexico School of Faculty Dentistry (Facultad de ~~Odontología~~ *Odontología*).

(B) Meet all criteria required for licensure in Mexico that is required and being applied by the National Autonomous University of Mexico School of Faculty Dentistry (Facultad de ~~Odontología~~ *Odontología*), including, but not limited to:

(i) A minimum grade point average.

(ii) A specified English language comprehension and conversational level.

(iii) Passage of a general examination.



- 1 (iv) Passage of an oral interview.
- 2 (C) Enroll and complete an orientation program that focuses on
- 3 the following:
- 4 (i) Practical issues in pharmacology that shall be taught by an
- 5 instructor who is affiliated with a California dental school
- 6 approved by the Dental Board of California.
- 7 (ii) Practical issues and diagnosis in oral pathology that shall be
- 8 taught by an instructor who is affiliated with a California dental
- 9 school approved by the Dental Board of California.
- 10 (iii) Clinical applications that shall be taught by an instructor
- 11 who is affiliated with a California dental school approved by the
- 12 Dental Board of California.
- 13 (iv) Biomedical sciences that shall be taught by an instructor
- 14 who is affiliated with a California dental school approved by the
- 15 Dental Board of California.
- 16 (v) Clinical history management that shall be taught by an
- 17 instructor who is affiliated with a California dental school
- 18 approved by the Dental Board of California.
- 19 (vi) Special patient care that shall be taught by an instructor
- 20 who is affiliated with a California dental school approved by the
- 21 Dental Board of California.
- 22 (vii) Sedation techniques that shall be taught by an instructor
- 23 who is affiliated with a California dental school approved by the
- 24 Dental Board of California.
- 25 (viii) Infection control guidelines which shall be taught by an
- 26 instructor who is affiliated with a California dental school
- 27 approved by the Dental Board of California.
- 28 (ix) Introduction to health care systems in California.
- 29 (x) Introduction to community clinic operations.
- 30 (2) (A) Graduate within the three-year period prior to
- 31 enrollment in the program, from a foreign dental school that has
- 32 received provisional approval or certification by November of
- 33 2003 from the Dental Board of California under the Foreign
- 34 Dental School Approval Program.
- 35 (B) Enroll and satisfactorily complete an orientation program
- 36 that focuses on the health care system and community clinic
- 37 operations in California.
- 38 (C) Enroll and satisfactorily complete a course taught by an
- 39 approved foreign dental school on the infection control guidelines
- 40 adopted by the Dental Board of California.





1 (3) Upon satisfactory completion to a competency level of the  
2 requirements in paragraph (1) or (2), dentists participating in the  
3 program shall be eligible to obtain employment in a nonprofit  
4 community health center pursuant to subdivision (f) within the  
5 structure of an extramural dental program for a period not to  
6 exceed three years.

7 (4) Dentists participating in the program shall be required to  
8 complete the necessary continuing education units required by the  
9 Dental Practice Act (Chapter 4 (commencing with Section 1600)).

10 (5) The program shall accept 30 participating dentists. The  
11 program shall also maintain an alternate list of program applicants.  
12 If an active program participant leaves the program for any reason,  
13 a participating dentist from the alternate list shall be chosen to fill  
14 the vacancy. Only active program participants shall be required to  
15 complete the orientation program specified in subparagraph (C) of  
16 paragraph (1).

17 (6) (A) Additionally, an extramural dental facility may be  
18 identified, qualified, and approved by the board as an adjunct to,  
19 and an extension of, the clinical and laboratory departments of an  
20 approved dental school.

21 (B) As used in this subdivision, “extramural dental facility”  
22 includes, but is not limited to, any clinical facility linked to an  
23 approved dental school for the purposes of monitoring or  
24 overseeing the work of a dentist licensed in Mexico participating  
25 in this program and that is employed by an approved dental school  
26 for instruction in dentistry that exists outside or beyond the walls,  
27 boundaries, or precincts of the primary campus of the approved  
28 dental school, and in which dental services are rendered. These  
29 facilities shall include nonprofit community health centers.

30 (C) Dental services provided to the public in these facilities  
31 shall constitute a part of the dental education program.

32 (D) Approved dental schools shall register extramural dental  
33 facilities with the board. This registration shall be accompanied by  
34 information supplied by the dental school pertaining to faculty  
35 supervision, scope of treatment to be rendered, arrangements for  
36 postoperative care, the name and location of the facility, the date  
37 operations shall commence at the facility, and a description of the  
38 equipment and facilities available. This information shall be  
39 supplemented with a copy of the agreement between the approved  
40 dental school and the affiliated institution establishing the

1 contractual relationship. Any change in the information initially  
2 provided to the board shall be communicated to the board.

3 (7) The program shall also include issues dealing with program  
4 operations, and shall be developed in consultation by  
5 representatives of community clinics, approved dental schools,  
6 and the National Autonomous University of Mexico School of  
7 Faculty Dentistry (~~Facultad de Odontología~~) *Odontología*).

8 (8) The Dental Board of California shall provide oversight  
9 review of the implementation of this program and the evaluation  
10 required pursuant to subdivision (j). The ~~Dental Board~~ *board* shall  
11 consult with dental schools in California that have applied for  
12 funding to implement and evaluate this program and executive and  
13 dental directors of nonprofit community health centers wanting to  
14 employ program participants, as it conducts its oversight  
15 responsibilities of this program and evaluation. Implementation of  
16 this program may not proceed unless appropriate funding is  
17 secured from nonprofit philanthropic entities. The ~~Dental Board~~  
18 ~~of California~~ *board* shall report to the Legislature every January  
19 during which the program is operational regarding the status of the  
20 program and the ability of the program to secure the funding  
21 necessary to carry out its required provisions. Notwithstanding  
22 Section 11005 of the Government Code, the board may accept  
23 funds from nonprofit philanthropic entities.

24 (e) Nonprofit community health centers that employ  
25 participants shall be responsible for ensuring that participants are  
26 enrolled in local English-language instruction programs and that  
27 the participants attain English-language fluency at a level that  
28 would allow the participants to serve the English-speaking patient  
29 population when necessary and have the literacy level to  
30 communicate with appropriate hospital staff when necessary.

31 (f) Physicians and dentists from Mexico having met the  
32 applicable requirements set forth in subdivisions (c) and (d) shall  
33 be placed in a pool of candidates who are eligible to be recruited  
34 for employment by nonprofit community health centers in  
35 California, including, but not limited to, those located in the  
36 Counties of Ventura, Los Angeles, San Bernardino, Imperial,  
37 Monterey, San Benito, Sacramento, San Joaquin, Santa Cruz,  
38 Yuba, Orange, Colusa, Glenn, Sutter, Kern, Tulare, Fresno,  
39 Stanislaus, San Luis Obispo, and San Diego. The Medical Board  
40 of California shall ensure that all Mexican physicians participating

1 in this program have satisfactorily met the requirements set forth  
2 in subdivision (c) prior to placement at a nonprofit community  
3 health center.

4 (g) Nonprofit community health centers in the counties listed  
5 in subdivision (f) shall apply to the Medical Board of California  
6 and the Dental Board of California to hire eligible applicants who  
7 shall then be required to complete a six-month externship that  
8 includes working in the nonprofit community health center and a  
9 corresponding hospital. Once enrolled in this externship, and upon  
10 payment of the required fees, the Medical Board of California shall  
11 issue a three-year nonrenewable license to practice medicine and  
12 the Dental Board of California shall issue a three-year  
13 nonrenewable dental special permit to practice dentistry. For  
14 purposes of this program, the fee for a three-year nonrenewable  
15 license to practice medicine shall be nine hundred dollars (\$900)  
16 and the fee for a three-year nonrenewable dental permit shall be  
17 five hundred forty-eight dollars (\$548). A licensee or  
18 permitholder shall practice only in the nonprofit community  
19 health center that offered him or her employment and the  
20 corresponding hospital. This three-year nonrenewable license or  
21 permit shall be deemed to be a license or permit in good standing  
22 pursuant to the provisions of this chapter for the purpose of  
23 participation and reimbursement in all federal, state, and local  
24 health programs, including managed care organizations and health  
25 maintenance organizations.

26 (h) The three-year nonrenewable license or permit shall  
27 terminate upon notice by certified mail, return receipt requested,  
28 to the licensee's or permitholder's address of record, if, in the  
29 Medical Board of California or Dental Board of California's sole  
30 discretion, it has determined that either:

31 (1) The license or permit was issued by mistake.

32 (2) A complaint has been received by either board against the  
33 licensee or permitholder that warrants terminating the license or  
34 permit pending an investigation and resolution of the complaint.

35 (i) All applicable employment benefits, salary, and policies  
36 provided by nonprofit community health centers to their current  
37 employees shall be provided to medical and dental practitioners  
38 from Mexico participating in this pilot program. This shall include  
39 nonprofit community health centers providing malpractice  
40 insurance coverage.

1 (j) Beginning 12 months after this pilot program has  
2 commenced, an evaluation of the program shall be undertaken  
3 with funds provided from philanthropic foundations. The  
4 evaluation shall be conducted jointly by one medical school and  
5 one dental school in California and ~~the National Autonomous~~  
6 ~~University of Mexico~~ UNAM in consultation with the Medical  
7 Board of California and the Dental Board of California. If the  
8 evaluation required pursuant to this section does not begin within  
9 15 months after the pilot project has commenced, the evaluation  
10 may be performed by an independent consultant selected by the  
11 Director of the Department of Consumer Affairs. This evaluation  
12 shall include, but not be limited to, the following issues and  
13 concerns:

14 (1) Quality of care provided by doctors and dentists licensed  
15 under this pilot program.

16 (2) Adaptability of these licensed practitioners to California  
17 medical and dental standards.

18 (3) Impact on working and administrative environment in  
19 nonprofit community health centers and impact on interpersonal  
20 relations with medical licensed counterparts in health centers.

21 (4) Response and approval by patients.

22 (5) Impact on cultural and linguistic services.

23 (6) Increases in medical encounters provided by participating  
24 practitioners to ~~limited~~ ~~English-speaking~~  
25 ~~limited-English-speaking~~ patient populations and increases in the  
26 number of ~~limited-English-speaking~~ ~~limited-English-speaking~~  
27 patients seeking health care services from nonprofit community  
28 health centers.

29 (7) Recommendations on whether the program should be  
30 continued, expanded, altered, or terminated.

31 (8) Progress reports on available data listed shall be provided  
32 to the Legislature on achievable time intervals beginning the  
33 second year of implementation of this pilot program. An interim  
34 final report shall be issued three months before termination of this  
35 pilot program. A final report shall be submitted to the Legislature  
36 at the time of termination of this pilot program on all of the above  
37 data. The final report shall reflect and include how other initiatives  
38 concerning the development of culturally and linguistically  
39 competent medical and dental providers within California and the

1 United States are impacting communities in need of these health  
2 care providers.

3 (k) Costs for administering this pilot program shall be secured  
4 from philanthropic entities.

5 (l) Program applicants shall be responsible for working with  
6 the governments of Mexico and the United States in order to obtain  
7 the necessary three-year visa required for program participation.

8 SEC. 3. Section 2241.5 of the Business and Professions Code  
9 is amended to read:

10 2241.5. (a) Notwithstanding any other provision of law, a  
11 physician and surgeon may prescribe or administer controlled  
12 substances to a person in the course of the physician and surgeon's  
13 treatment of that person for a diagnosed condition causing  
14 intractable pain.

15 (b) "Intractable pain," as used in this section, means a pain  
16 state in which the cause of the pain cannot be removed or otherwise  
17 treated and which in the generally accepted course of medical  
18 practice no relief or cure of the cause of the pain is possible or none  
19 has been found after reasonable efforts, including, but not limited  
20 to, evaluation by the attending physician and surgeon and one or  
21 more physicians and surgeons specializing in the treatment of the  
22 area, system, or organ of the body perceived as the source of the  
23 pain.

24 (c) No physician and surgeon shall be subject to disciplinary  
25 action by the board for prescribing or administering controlled  
26 substances in the course of treatment of a person for intractable  
27 pain.

28 (d) This section shall not apply to those persons being treated  
29 by the physician and surgeon for chemical dependency because of  
30 their use of drugs or controlled substances.

31 (e) This section shall not authorize a physician and surgeon to  
32 prescribe or administer controlled substances to a person the  
33 physician and surgeon knows to be using drugs or substances for  
34 nontherapeutic purposes.

35 (f) This section shall not affect the power of the board to deny,  
36 revoke, or suspend the license of any physician and surgeon who  
37 does any of the following:

38 (1) Prescribes or administers a controlled substance or  
39 treatment that is nontherapeutic in nature or nontherapeutic in the  
40 manner the controlled substance or treatment is administered or

1 prescribed or is for a nontherapeutic purpose in a nontherapeutic  
2 manner.

3 (2) Fails to keep complete and accurate records of purchases  
4 and disposals of substances listed in the California Controlled  
5 Substances Act, or of controlled substances scheduled in, or  
6 pursuant to, the federal Comprehensive Drug Abuse Prevention  
7 and Control Act of 1970. A physician and surgeon shall keep  
8 records of his or her purchases and disposals of these drugs,  
9 including the date of purchase, the date and records of the sale or  
10 disposal of the drugs by the physician and surgeon, the name and  
11 address of the person receiving the drugs, and the reason for the  
12 disposal of or the dispensing of the drugs to the person and shall  
13 otherwise comply with all state recordkeeping requirements for  
14 controlled substances.

15 (3) Writes false or fictitious prescriptions for controlled  
16 substances listed in the California Controlled Substances Act or  
17 scheduled in the federal Comprehensive Drug Abuse Prevention  
18 and Control Act of 1970.

19 (4) Prescribes, administers, or dispenses in a manner not  
20 consistent with public health and welfare controlled substances  
21 listed in the California Controlled ~~Substance~~ *Substances* Act or  
22 scheduled in the federal Comprehensive Drug Abuse Prevention  
23 and Control Act of 1970.

24 (5) Prescribes, administers, or dispenses in violation of either  
25 Chapter 4 (commencing with Section 11150) or Chapter 5  
26 (commencing with Section 11210) of Division 10 of the Health  
27 and Safety Code or this chapter.

28 (g) Nothing in this section shall be construed to prohibit the  
29 governing body of a hospital from taking disciplinary actions  
30 against a physician and surgeon, as authorized pursuant to Sections  
31 809.05, 809.4, and 809.5.

32 SEC. 4. Section 2260 of the Business and Professions Code  
33 is amended to read:

34 2260. (a) A physician and surgeon who removes sperm or  
35 ova from a patient shall, before the sperm or ova are used for a  
36 purpose other than reimplantation in the same patient or  
37 implantation in the spouse of the patient, obtain the written consent  
38 of the patient as provided in subdivision (b).

39 (b) The consent required by subdivision (a) shall conform to all  
40 of the following requirements:



1 (1) The consent shall be in writing and shall contain the  
2 following statement: I (name of donor) do hereby donate (type and  
3 number, if applicable, of sperm or ova), to (name of clinic or other  
4 donee) for (specify purpose).

5 (2) The consent shall contain a statement by the donor that  
6 specifies the disposition of any unused donated material.

7 (3) The consent shall be signed by the patient and by the  
8 physician and surgeon who removes the sperm or ova.

9 (4) The physician and surgeon shall retain the original consent  
10 in the medical record of the patient and give a copy of the consent  
11 to the patient.

12 (5) The consent shall contain a notification to the patient that  
13 the written consent is an important document that should be  
14 retained with other vital records.

15 (6) If the procedure to remove the sperm or ova is performed  
16 in a hospital, the physician and surgeon shall provide a copy of the  
17 consent to the hospital.

18 (c) Nothing in this section shall affect the obligation of a  
19 physician and surgeon under current law to obtain the informed  
20 consent of a patient before performing a medical procedure on the  
21 patient that may significantly affect the patient's ~~reproductive~~  
22 *reproductive* health or ability to conceive, or both.

23 (d) A violation of this section constitutes unprofessional  
24 conduct. Section 2314 shall not apply to this section.

25 (e) A physician and surgeon who fails, for the second time, to  
26 obtain any consent required in subdivision (a) or (b) before  
27 transferring sperm or ova from a provider of sperm or ova to a  
28 recipient, shall be assessed a civil penalty in an amount not less  
29 than one thousand dollars (\$1,000) and not more than five  
30 thousand dollars (\$5,000) plus court costs, as determined by the  
31 court, which penalty and costs shall be paid to the individual whose  
32 required consent was not obtained. A separate penalty shall be  
33 assessed for each individual from whom the consent was not  
34 obtained. The penalties in this section shall be available in addition  
35 to any other remedies that may be available under other provisions  
36 of law.

37 SEC. 5. Section 3651 of the Business and Professions Code  
38 is amended to read:

39 3651. In order to be certified for the specialty practice of  
40 naturopathic childbirth attendance, a naturopathic doctor shall



1 obtain a passing grade on the American College of Nurse  
2 Midwives Written Examination, or a substantially equivalent  
3 examination approved by the bureau, and shall establish, to the  
4 bureau's satisfaction, compliance with one of the following  
5 requirements:

6 (a) Successful completion of a certificate of midwifery or  
7 naturopathic obstetrics specialty from an approved naturopathic  
8 medical education program consisting of not less than 84 semester  
9 units or 126 quarter units that substantially complies with the  
10 following educational standards and requirements:

11 (1) The curriculum is presented in semester or quarter units  
12 under the following formula:

13 (A) One hour of instruction in ~~the~~ theory each week throughout  
14 a semester or quarter equals one unit.

15 (B) Three hours of clinical practice each week throughout a  
16 semester or quarter equals one unit.

17 (2) The program provides both academic and clinical  
18 preparation that is substantially equivalent to that provided in a  
19 program accredited by the American College of Nurse Midwives.  
20 The program includes, but is not limited to, preparation in all of  
21 the following areas:

22 (A) The art and science of midwifery, one-half of which shall  
23 be in theory and one-half of which shall be in clinical practice.  
24 Theory and clinical practice shall be concurrent in the areas of  
25 maternal and child health, including, but not limited to, labor and  
26 delivery, neonatal well care, and postpartum care.

27 (B) Communications skills that include the principles of oral,  
28 written, and group communications.

29 (C) Anatomy and physiology, genetics, obstetrics and  
30 gynecology, embryology and fetal development, neonatology,  
31 applied microbiology, chemistry, child growth and development,  
32 pharmacology, nutrition, laboratory diagnostic tests and  
33 procedures, and physical assessment.

34 (D) Concepts in psychosocial, emotional, and cultural aspects  
35 of maternal and child care, human sexuality, counseling and  
36 teaching, maternal and infant and family bonding process, breast  
37 feeding, family planning, principles of preventive health, and  
38 community health.

39 (E) Aspects of the normal pregnancy, labor and delivery,  
40 postpartum period, newborn care, family planning, or routine



1 gynecological care in alternative birth centers, homes, and  
2 hospitals.

3 (3) The program integrates the following subjects throughout  
4 its entire curriculum:

5 (A) Midwifery process.

6 (B) Basic intervention skills in preventive, remedial, and  
7 supportive midwifery.

8 (C) The knowledge and skills required to develop collegial  
9 relationships with health care providers from other disciplines.

10 (D) Related behavioral and social sciences with emphasis on  
11 societal and cultural patterns, human development, and behavior  
12 related to maternal and child health, illness, and wellness.

13 (4) Instruction in personal hygiene, client abuse, cultural  
14 diversity, and the legal, social, and ethical aspects of midwifery.

15 (5) Instruction in the midwifery management process which  
16 shall include all of the following:

17 (A) Obtaining or updating a defined and relevant database for  
18 assessment of the health status of the client.

19 (B) Identifying problems based upon correct interpretation of  
20 the database.

21 (C) Preparing a defined needs or problem list, or both, with  
22 corroboration from the client.

23 (D) Consulting, collaborating with, and referring to,  
24 appropriate members of the health care team.

25 (E) Providing information to enable clients to make  
26 appropriate decisions and to assume appropriate responsibility for  
27 their own health.

28 (F) Assuming direct responsibility for the development of  
29 comprehensive, supportive care for the client and with the client.

30 (G) Assuming direct responsibility for implementing the plan  
31 of care.

32 (H) Initiating appropriate measures for obstetrical and neonatal  
33 emergencies.

34 (I) Evaluating, with corroboration from the client, the  
35 achievement of health care goals and modifying the plan of care  
36 appropriately; ~~or~~.

37 (b) Successful completion of an educational program that the  
38 bureau has determined satisfies the criteria of subdivision (a) and  
39 current licensure as a midwife by a state with licensing standards



1 that have been found by the bureau to be substantially equivalent  
2 to those adopted by the bureau pursuant to this article.

3 SEC. 6. Section 4052 of the Business and Professions Code  
4 is amended to read:

5 4052. (a) Notwithstanding any other provision of law, a  
6 pharmacist may *do any of the following*:

7 (1) Furnish a reasonable quantity of compounded medication  
8 to a prescriber for office use by the prescriber.

9 (2) Transmit a valid prescription to another pharmacist.

10 (3) Administer, orally or topically, drugs and biologicals  
11 pursuant to a prescriber's order.

12 (4) Perform the following procedures or functions in a licensed  
13 health care facility in accordance with policies, procedures, or  
14 protocols developed by health professionals, including physicians,  
15 pharmacists, and registered nurses, with the concurrence of the  
16 facility administrator:

17 (A) Ordering or performing routine drug therapy-related  
18 patient assessment procedures including temperature, pulse, and  
19 respiration.

20 (B) Ordering drug therapy-related laboratory tests.

21 (C) Administering drugs and biologicals by injection pursuant  
22 to a prescriber's order (the administration of immunizations under  
23 the supervision of a prescriber may also be performed outside of  
24 a licensed health care facility).

25 (D) Initiating or adjusting the drug regimen of a patient  
26 pursuant to an order or authorization made by the patient's  
27 prescriber and in accordance with the policies, procedures, or  
28 protocols of the licensed health care facility.

29 (5) (A) Perform the following procedures or functions as part  
30 of the care provided by a health care facility, a licensed home  
31 health agency, a licensed clinic in which there is a physician  
32 oversight, a provider who contracts with a licensed health care  
33 service plan with regard to the care or services provided to the  
34 enrollees of that health care service plan, or a physician, in  
35 accordance, as applicable, with policies, procedures, or protocols  
36 of that facility, the home health agency, the licensed clinic, the  
37 health care service plan, or that physician, in accordance with  
38 subparagraph (C):



1 (i) Ordering or performing routine drug therapy-related patient  
2 assessment procedures, including temperature, pulse, and  
3 respiration.

4 (ii) Ordering drug therapy-related laboratory tests.

5 (iii) Administering drugs and biologicals by injection pursuant  
6 to a prescriber's order (the administration of immunizations under  
7 the supervision of a prescriber may also be performed outside of  
8 a licensed health care facility).

9 (iv) Initiating or adjusting the drug regimen of a patient  
10 pursuant to a specific written order or authorization made by the  
11 patient's prescriber for the individual patient, and in accordance  
12 with the policies, procedures, or protocols of the health care  
13 facility, home health agency, licensed clinic, health care service  
14 plan, or physician. Adjusting the drug regimen does not include  
15 substituting or selecting a different drug, except as authorized by  
16 the protocol. The pharmacist shall provide written notification to  
17 the patient's prescriber, or enter the appropriate information in an  
18 electronic patient record system shared by the prescriber, of any  
19 drug regimen initiated pursuant to this clause within 24 hours.

20 (B) A patient's prescriber may prohibit, by written instruction,  
21 any adjustment or change in the patient's drug regimen by the  
22 pharmacist.

23 (C) The policies, procedures, or protocols referred to in this  
24 paragraph shall be developed by health care professionals,  
25 including physicians, pharmacists, and registered nurses, and, at  
26 a minimum, meet all of the following requirements:

27 (i) Require that the pharmacist function as part of a  
28 multidisciplinary group that includes physicians and direct care  
29 registered nurses. The multidisciplinary group shall determine the  
30 appropriate participation of the pharmacist and the direct care  
31 registered nurse.

32 (ii) Require that the medical records of the patient be available  
33 to both the patient's prescriber and the pharmacist.

34 (iii) Require that the procedures to be performed by the  
35 pharmacist relate to a condition for which the patient has first been  
36 seen by a physician.

37 (iv) Except for procedures or functions provided by a health  
38 care facility, a licensed clinic in which there is physician oversight,  
39 or a provider who contracts with a licensed health care plan with  
40 regard to the care or services provided to the enrollees of that

1 health care service plan, require the procedures to be performed in  
2 accordance with a written, patient-specific protocol approved by  
3 the treating or supervising physician. Any change, adjustment, or  
4 modification of an approved preexisting treatment or drug therapy  
5 shall be provided in writing to the treating or supervising physician  
6 within 24 hours.

7 (6) Manufacture, measure, fit to the patient, or sell and repair  
8 dangerous devices or furnish instructions to the patient or the  
9 patient's representative concerning the use of those devices.

10 (7) Provide consultation to patients and professional  
11 information, including clinical or pharmacological information,  
12 advice, or consultation to other health care professionals.

13 (8) (A) Furnish emergency contraception drug therapy in  
14 accordance with either of the following:

15 (i) Standardized procedures or protocols developed by the  
16 pharmacist and an authorized prescriber who is acting within his  
17 or her scope of practice.

18 (ii) Standardized procedures or protocols developed and  
19 approved by both the board and the Medical Board of California  
20 in consultation with the American College of Obstetricians and  
21 Gynecologists, the California ~~Pharmacist~~ *Pharmacists*  
22 Association, and other appropriate entities. Both the board and the  
23 Medical Board of California shall have authority to ensure  
24 compliance with this clause, and both boards are specifically  
25 charged with the enforcement of this provision with respect to their  
26 respective licensees. Nothing in this clause shall be construed to  
27 expand the authority of a pharmacist to prescribe any prescription  
28 medication.

29 (B) Prior to performing a procedure authorized under this  
30 paragraph, a pharmacist shall complete a training program on  
31 emergency contraception that consists of at least one hour of  
32 approved continuing education on emergency contraception drug  
33 therapy.

34 (C) A pharmacist, pharmacist's employer, or pharmacist's  
35 agent may not directly charge a patient a separate consultation fee  
36 for emergency contraception drug therapy services initiated  
37 pursuant to this paragraph, but may charge an administrative fee  
38 not to exceed ten dollars (\$10) above the retail cost of the drug.  
39 Upon an oral, telephonic, electronic, or written request from a  
40 patient or customer, a pharmacist or pharmacist's employee shall

1 disclose the total retail price that a consumer would pay for  
2 emergency contraception drug therapy. As used in this  
3 subparagraph, total retail price includes providing the consumer  
4 with specific information regarding the price of the emergency  
5 contraception drugs and the price of the administrative fee  
6 charged. This limitation is not intended to interfere with other  
7 contractually agreed-upon terms between a pharmacist, a  
8 pharmacist's employer, or a pharmacist's agent; and a health care  
9 service plan or insurer. Patients who are insured or covered and  
10 receive a pharmacy benefit that covers the cost of emergency  
11 contraception shall not be required to pay an administrative fee.  
12 These patients shall be required to pay copayments pursuant to the  
13 terms and conditions of their coverage. The provisions of this  
14 subparagraph shall cease to be operative for dedicated emergency  
15 contraception drugs when these drugs are reclassified as  
16 over-the-counter products by the federal Food and Drug  
17 Administration.

18 (D) A pharmacist may not require a patient to provide  
19 individually identifiable medical information that is not specified  
20 in Section 1707.1 of Title 16 of the California Code of Regulations  
21 before initiating emergency contraception drug therapy pursuant  
22 to this paragraph.

23 (b) (1) Prior to performing any procedure authorized by  
24 paragraph (4) of subdivision (a), a pharmacist shall have received  
25 appropriate training as prescribed in the policies and procedures  
26 of the licensed health care facility.

27 (2) Prior to performing any procedure authorized by paragraph  
28 (5) of subdivision (a), a pharmacist shall have either (A)  
29 successfully completed clinical residency training or (B)  
30 demonstrated clinical experience in direct patient care delivery.

31 (3) For each emergency contraception drug therapy initiated  
32 pursuant to paragraph (8) of subdivision (a), the pharmacist shall  
33 provide the recipient of the emergency contraception drugs with  
34 a standardized factsheet that includes, but is not limited to, the  
35 indications for use of the drug, the appropriate method for using  
36 the drug, the need for medical followup, and other appropriate  
37 information. The board shall develop this form in consultation  
38 with the State Department of Health Services, the American  
39 College of Obstetricians and Gynecologists, the California  
40 Pharmacists Association, and other health care organizations. The

1 provisions of this section do not preclude the use of existing  
2 publications developed by nationally recognized medical  
3 organizations.

4 (c) Nothing in this section shall affect the requirements of  
5 existing law relating to maintaining the confidentiality of medical  
6 records.

7 (d) Nothing in this section shall affect the requirements of  
8 existing law relating to the licensing of a health care facility.

9 SEC. 7. Section 4311 of the Business and Professions Code is  
10 amended to read:

11 4311. (a) Any license issued by the board, or the holder  
12 thereof, shall be suspended automatically during any time that the  
13 person is incarcerated after conviction of a felony, regardless of  
14 whether the conviction has been appealed. The board,  
15 immediately upon receipt of a certified copy of a record of a  
16 criminal conviction, shall determine whether the person has been  
17 automatically suspended by virtue of incarceration pursuant to a  
18 felony conviction and, if so, the duration of that suspension. The  
19 board shall notify the person so suspended of the suspension and  
20 that the person has a right to request a hearing, solely as to whether  
21 he or she is incarcerated pursuant to a felony conviction, in writing  
22 at that person's address of record with the board and at the facility  
23 in which the person is incarcerated.

24 (b) In addition to any suspension under subdivision (a), the  
25 board shall summarily suspend any license issued by the board  
26 where a conviction of the holder of the license meets the  
27 requirements of paragraphs (1) and (2).

28 (1) A felony that was either of the following:

29 (A) Committed in the course of a business or practice for which  
30 the board issues a license.

31 (B) Committed in a manner that a client, customer, or patient  
32 of the licensee was a victim.

33 (2) Where an element of the offense involves either of the  
34 following:

35 (A) The specific intent to deceive, defraud, steal, or make a  
36 false statement.

37 (B) The illegal sale or possession for sale of or trafficking in  
38 any controlled substance.

39 (3) The suspension shall continue until the time for appeal has  
40 ~~elapsed~~ *elapsed*, if no appeal is taken, or until the judgment of



1 conviction has been affirmed on appeal or has otherwise become  
2 final, and until further order of the board.

3 (4) The board shall immediately send notice in writing of the  
4 suspension to the licensee, or the holder of any other ~~board-issued~~  
5 *board-issued* license, at his or her address of record and, if  
6 incarcerated at the time, at the facility in which the person is  
7 incarcerated. The notice shall include notification of that person's  
8 right to elect to have the issue of penalty heard as provided in  
9 paragraph (2) of subdivision (d), and of the right to request a  
10 hearing to contest the summary suspension. Any request for a  
11 hearing under this paragraph must be received by the board within  
12 15 days following receipt of the notice provided for by this  
13 paragraph.

14 (5) The hearing shall be before an administrative law judge, a  
15 committee of the board sitting with an administrative law judge,  
16 or the board sitting with an administrative law judge, at the board's  
17 discretion, and shall be subject to review by the board, at its  
18 discretion. The hearing shall be limited to (A) whether there has  
19 been a felony conviction as stated in the board's notice, and (B)  
20 whether the conviction meets the criteria of this subdivision,  
21 except where the licensee chooses to proceed as provided by  
22 paragraph (2) of subdivision (d), or where the board has also filed  
23 and served an accusation as provided in Chapter 5 (commencing  
24 with Section 11500) of Part 1 of Division 3 of Title 2 of the  
25 Government Code and given notice of the hearing as required by  
26 that chapter; provided that if an accusation under Chapter 5  
27 (commencing with Section 11500) of Part 1 of Division 3 of Title  
28 2 of the Government Code is also to be heard, only an  
29 administrative law judge sitting alone or the board, sitting with an  
30 administrative law judge, may hear the case.

31 (c) In addition to any suspension under subdivision (a), the  
32 board shall also suspend any license issued by the board, or the  
33 holder thereof, if the board determines that the felony conviction  
34 of the holder of the license is substantially related to the  
35 qualifications, functions, or duties of the licensee.

36 (1) Notice of the board's determination shall be sent to the  
37 licensee, or the holder thereof, at that person's address of record  
38 with the board and, if the person is incarcerated at the time, the  
39 facility in which the person is incarcerated. The notice shall advise  
40 the person that the license shall be suspended without hearing

1 unless, within 15 days following receipt of the notice, a written  
2 request for hearing is delivered to the board.

3 (2) Upon receipt of a timely request for hearing, a notice of  
4 hearing shall be sent to the person at least 10 days before the date  
5 scheduled for the hearing. The notice of hearing shall include  
6 notification of that person's right to elect to have the issue of  
7 penalty heard as provided in paragraph (2) of subdivision (d).

8 (3) The hearing to determine whether a felony conviction is  
9 substantially related for purposes of an interim suspension under  
10 this subdivision shall be separate from any hearing on an  
11 accusation under the Administrative Procedure Act, except where  
12 the licensee elects to proceed under paragraph (2) of subdivision  
13 (d), or where the board has filed and served an accusation as  
14 provided by Chapter 5 (commencing with Section 11500) of Part  
15 1 of Division 3 of Title 2 of the Government Code and given notice  
16 of hearing as required by that chapter. The hearing on whether the  
17 felony conviction is substantially related shall be heard either by  
18 an administrative law judge sitting alone, by a committee of the  
19 board sitting with an administrative law judge, or by the board  
20 sitting with an administrative law judge, at the board's discretion,  
21 and shall be subject to review by the board, at its discretion.  
22 However, if an accusation under Chapter 5 (commencing with  
23 Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
24 Code is also to be heard, only an administrative law judge sitting  
25 alone or the board, sitting with an administrative law judge, may  
26 hear the case. Except where a person proceeds under paragraph (2)  
27 of subdivision (d), or the board proceeds with an accusation at the  
28 same time, any suspension imposed under this subdivision shall  
29 continue until an accusation is filed under Chapter 5 (commencing  
30 with Section 11500) of Part 1 of Division 3 of Title 2 of the  
31 Government Code and a final decision is rendered by the board.

32 (4) A conviction of any crime referred to in Section 4301, or for  
33 violation of Section 187, 261, or 288 of the Penal Code, shall be  
34 conclusively presumed to be substantially related to the  
35 qualifications, functions, or duties of a licensee of the board. Upon  
36 its own motion or for good cause shown the board may decline to  
37 impose a suspension under this subdivision or may set aside a  
38 suspension previously imposed when it appears to be in the interest  
39 of justice to do so, with due regard to maintaining the integrity of



1 and confidence in the practice of pharmacy and the handling of  
2 dangerous drugs and devices.

3 (d) (1) Discipline may be ordered in accordance with Section  
4 4300 or an application denied when the time for appeal has  
5 elapsed, the judgment of conviction has been affirmed on appeal,  
6 or an order granting probation is made suspending the imposition  
7 of sentence, irrespective of a subsequent order under Section  
8 1203.4 of the Penal Code allowing the person to withdraw his or  
9 her plea of guilty and to enter a plea of not guilty, setting aside the  
10 verdict of guilty, or dismissing the accusation, complaint,  
11 information, or indictment.

12 (2) The issue of penalty shall be heard by an administrative law  
13 judge sitting alone or with a committee of the board or with the  
14 board itself, at the board's discretion, and any decision shall be  
15 subject to review by the board, at its discretion. The hearing shall  
16 not be held until the judgment of conviction has become final or,  
17 irrespective of a subsequent order under Section 1203.4 of the  
18 Penal Code, an order granting probation has been made  
19 suspending the imposition of sentence, provided that a licensee  
20 may, at his or her option, elect to have the issue of penalty decided  
21 before those time periods have elapsed. Where the licensee so  
22 elects, the issue of penalty shall be heard in the manner described  
23 in this section at the hearing to determine whether the conviction  
24 was substantially related to the qualifications, functions, or duties  
25 of the licensee. If the conviction of a licensee who has made this  
26 election is overturned on appeal, any discipline ordered pursuant  
27 to this section shall automatically cease. Nothing in this  
28 subdivision shall prohibit the board from pursuing disciplinary  
29 action based on any cause, including the facts underlying the  
30 conviction, other than the overturned conviction.

31 (3) The record of the proceedings resulting in the criminal  
32 conviction, including a transcript of any testimony taken in  
33 connection with the proceeding, may be received in evidence in  
34 any administrative proceeding to the extent the testimony would  
35 otherwise be admissible under Chapter 5 (commencing with  
36 Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
37 Code. A certified copy of the criminal conviction shall be  
38 conclusive proof of the fact of the conviction.

39 (e) Other provisions of this chapter setting forth procedures for  
40 the suspension or revocation of a license issued by the board shall

1 not apply to proceedings conducted pursuant to this section, except  
2 as specifically provided in this section.

3 (f) For purposes of this section, a crime is a felony if it is  
4 specifically declared to be so or is made a felony by subdivision  
5 (a) of Section 17 of the Penal Code, unless it is charged as a  
6 misdemeanor pursuant to paragraph (4) or (5) of subdivision (b)  
7 of Section 17 of the Penal Code, irrespective of whether in a  
8 particular case the crime may be considered a misdemeanor as a  
9 result of postconviction proceedings. For purposes of this section,  
10 a felony also includes a conviction under federal law, or the law of  
11 any other state of the United States, of the District of Columbia,  
12 or of any territory or possession of the United States. A conviction  
13 includes a plea or verdict of guilty or a conviction following a plea  
14 of nolo contendere.

15 (g) The board may delegate the authority to issue a suspension  
16 under subdivision (a) or (b) or a notice of suspension under  
17 subdivision (c) to the executive officer of the board.

18 SEC. 8. Section 4409 of the Business and Professions Code  
19 is amended to read:

20 4409. At the time a pharmacy license is renewed pursuant to  
21 subdivision (a) of Section 4110 or a pharmacist license is renewed  
22 pursuant to Section 4401, the pharmacy or pharmacist may make  
23 a twenty-five-dollar (\$25) contribution, to be submitted to the  
24 board, for the sole purpose of funding the California Pharmacist  
25 Scholarship and Loan Repayment Program established pursuant to  
26 Article 2 (commencing with Section ~~129198~~ 128198) of Chapter  
27 3 of Part 3 of Division 107 of the Health and Safety Code. The  
28 contribution submitted pursuant to this section shall be paid into  
29 the State Treasury and credited to the California Pharmacist  
30 Scholarship and Loan Repayment Program Fund established  
31 pursuant to Section ~~129198.5~~ 128198.5 of the Health and Safety  
32 Code.

33 SEC. 9. Section 4980.90 of the Business and Professions  
34 Code is amended to read:

35 4980.90. (a) Experience gained outside of California shall be  
36 accepted toward the licensure requirements if it is substantially  
37 equivalent to that required by this chapter and if the applicant has  
38 gained a minimum of 250 hours of supervised experience in direct  
39 counseling within California while registered as an intern with the  
40 board.

(b) Education gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of this chapter, and if the applicant has completed all of the following:

(1) A two ~~semester~~ *semester-* or three ~~quarter-unit~~ *quarter-unit* course in California law and professional ethics for marriage, family, and child counselors that shall include areas of study as specified in Section 4980.41.

(2) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations promulgated thereunder.

(3) A minimum of 10 contact hours of training or coursework in sexuality as specified in Section 25 and any regulations promulgated thereunder.

(4) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency as specified by regulation.

(5) ~~(1)-(A)~~ Instruction in spousal or partner abuse assessment, detection, and intervention. This instruction may be taken either in fulfillment of other educational requirements for licensure or in a separate course.

~~(2)~~

~~(B)~~ On and after January 1, 2004, a minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(6) On and after January 1, 2003, a minimum of a two ~~semester~~ *semester-* or three ~~quarter-unit~~ *quarter-unit* survey course in psychological testing. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(7) On and after January 1, 2003, a minimum of a two ~~semester~~ *semester-* or three ~~quarter-unit~~ *quarter-unit* survey course in psychopharmacology. This course may be taken either in fulfillment of other requirements for licensure or in a separate course.

(8) With respect to human sexuality, alcoholism and other chemical substance dependency, spousal or partner abuse assessment, detection, and intervention, psychological testing, and psychopharmacology, the board may accept training or coursework acquired out of state.

1 (c) For purposes of this section, the board may, in its discretion,  
2 accept education as substantially equivalent if the applicant has  
3 been granted a degree in a single integrated program primarily  
4 designed to train marriage, family, and child counselors and if the  
5 applicant's education meets the requirements of Sections 4980.37  
6 and 4980.40. The degree title and number of units in the degree  
7 program need not be identical to those required by subdivision (a)  
8 of Section 4980.40. If the applicant's degree does not contain the  
9 number of units required by subdivision (a) of Section 4980.40,  
10 the board may, in its discretion, accept the applicant's education as  
11 substantially equivalent if the applicant's degree otherwise  
12 complies with this section and the applicant completes the units  
13 required by subdivision (a) of Section 4980.40.

14 SEC. 10. Section 7026.1 of the Business and Professions  
15 Code is amended to read:

16 7026.1. The term "contractor" includes *all of the following*:

17 (a) Any person not exempt under Section 7053 who maintains  
18 or services air-conditioning, heating, or refrigeration equipment  
19 that is a fixed part of the structure to which it is attached.

20 (b) Any person, consultant to an owner-builder, firm,  
21 association, organization, partnership, business trust, corporation,  
22 or company, who or which undertakes, offers to undertake,  
23 purports to have the capacity to undertake, or submits a bid, to  
24 construct any building or home improvement project, or part  
25 thereof.

26 (c) A temporary labor service agency that, as the employer,  
27 provides employees for the performance of work covered by this  
28 chapter. The provisions of this subdivision shall not apply if there  
29 is a properly licensed contractor who exercises supervision in  
30 accordance with Section 7068.1 and who is directly responsible  
31 for the final results of the work. Nothing in this subdivision shall  
32 require a qualifying individual, as provided in Section 7068, to be  
33 present during the supervision of work covered by this chapter. A  
34 contractor requesting the services of a temporary labor *service*  
35 agency shall provide his or her license number to that temporary  
36 labor service agency.

37 (d) Any person not otherwise exempt by this chapter, who  
38 performs tree removal, tree pruning, stump removal, or engages in  
39 tree or limb cabling or guying. The term contractor does not  
40 include a person performing the activities of a ~~nurseryman~~





*nurseryperson* who in the normal course of routine work performs incidental pruning of trees, or guying of planted trees and their limbs. The term contractor does not include a gardener who in the normal course of routine work performs incidental pruning of trees measuring less than 15 feet in height after planting.

(e) Any person engaged in the business of drilling, digging, boring, or otherwise constructing, deepening, repairing, re-perforating, or abandoning any water well, cathodic protection well, or monitoring well.

SEC. 11. Section 7028 of the Business and Professions Code is amended to read:

7028. (a) It is a misdemeanor for any person to engage in the business or act in the capacity of a contractor within this state without having a license therefor, unless the person is particularly exempted from the provisions of this chapter.

(b) If ~~the~~ a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed person performed contracting work, or four thousand five hundred dollars (\$4,500), whichever is greater, and the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.

(c) In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, “the price of the contract” for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

(d) Notwithstanding any other provision of law to the contrary, an indictment for any violation of this section by the unlicensed contractor shall be found or an information or complaint filed within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.

SEC. 12. Section 12107.1 of the Business and Professions Code is amended to read:

12107.1. The director, by regulation, may establish a standard or standards ~~of~~ of net weight or net measure, or net count of any



1 commodity, except any manufactured commodity consisting of  
2 four or more staple ingredients. ~~Such~~ These standards, whenever  
3 applicable, shall be based upon published, official federal or state  
4 specifications and requirements or, in the absence of any such  
5 published official specifications, upon established and accepted  
6 common usage. Any ~~such~~ regulation shall be adopted, amended,  
7 or repealed in conformity with the provisions of Chapter ~~4.5~~ 3.5  
8 (commencing with Section ~~11371~~ 11340) of Part 1 of Division 3  
9 of Title 2 of the Government Code.

10 Whenever a standard ~~or~~, net weight ~~or~~, net measure, or net  
11 count has been established for any commodity, it is unlawful to sell  
12 ~~such the~~ commodity; by, at, or for a quantity greater or less than  
13 the standard.

14 SEC. 13. Section 13570 of the Business and Professions Code  
15 is amended to read:

16 13570. (a) A manufacturer, blender, agent, jobber,  
17 consignment agent, or distributor who distributes motor fuel  
18 products that contain at least 1 percent alcohol by volume, shall  
19 state on an invoice, bill of lading, shipping paper, or other  
20 documentation used in normal and customary business practices,  
21 the percentage of alcohol, the type of alcohol, and, except in  
22 documentation certifying the octane rating of gasoline as required  
23 by federal law, the minimum antiknock index number, as defined  
24 in Section 13403, of the products distributed.

25 (b) If a motor vehicle fuel product contains less than ~~10%~~ 10  
26 percent alcohol, a statement in the documentation that the product  
27 “contains up to 10% ethanol” meets the requirement of  
28 subdivision (a) that it state the percentage of alcohol.

29 (c) This section, as it relates to certification of the minimum  
30 antiknock index number, applies to all motor vehicle gasoline  
31 distributed.

32 SEC. 14. Section 17529.1 of the Business and Professions  
33 Code is amended to read:

34 17529.1. For the purpose of this article, the following  
35 definitions apply:

36 (a) “Advertiser” means a person or entity that advertises  
37 through the use of commercial e-mail advertisements.

38 (b) “California electronic mail address” or “California e-mail  
39 address” means any of the following:



1 (1) An e-mail address furnished by an electronic mail service  
2 provider that sends bills for furnishing and maintaining that e-mail  
3 address to a mailing address in this state.

4 (2) An e-mail address ordinarily accessed from a computer  
5 located in this state.

6 (3) An e-mail address furnished to a resident of this state.

7 (c) “Commercial e-mail advertisement” means any electronic  
8 mail message initiated for the purpose of advertising or promoting  
9 the lease, sale, rental, gift offer, or other disposition of any  
10 property, goods, services, or extension of credit.

11 (d) “Direct consent” means that the recipient has expressly  
12 consented to receive e-mail advertisements from the advertiser,  
13 either in response to a clear and conspicuous request for the  
14 consent or at the recipient’s own initiative.

15 (e) “Domain name” means any alphanumeric designation that  
16 is registered with or assigned by any domain name registrar as part  
17 of an electronic address on the Internet.

18 (f) “Electronic mail” or “e-mail” means an electronic  
19 message that is sent to an e-mail address and transmitted between  
20 two or more telecommunications devices, computers, or  
21 electronic devices capable of receiving electronic messages,  
22 whether or not the message is converted to hard copy format after  
23 receipt ~~or is~~, viewed upon transmission, or stored for later  
24 retrieval. “Electronic mail” or “e-mail” includes electronic  
25 messages that are transmitted through a local, regional, or global  
26 computer network.

27 (g) “Electronic mail address” or “e-mail address” means a  
28 destination, commonly expressed as a string of characters, to  
29 which electronic mail can be sent or delivered. An “electronic mail  
30 address” or “e-mail address” consists of a user name or mailbox  
31 and a reference to an Internet domain.

32 (h) “Electronic mail service provider” means any person,  
33 including an Internet service provider, that is an intermediary in  
34 sending or receiving electronic mail or that provides to end users  
35 of the electronic mail service the ability to send or receive  
36 electronic mail.

37 (i) “Initiate” means to transmit or cause to be transmitted a  
38 commercial e-mail advertisement or assist in the transmission of  
39 a commercial e-mail advertisement by providing electronic mail  
40 addresses where the advertisement may be sent, but does not

1 include the routine transmission of the advertisement through the  
2 network or system of a telecommunications utility or an electronic  
3 mail service provider through its network or system.

4 (j) “Incident” means a single transmission or delivery to a  
5 single recipient or to multiple recipients of *an* unsolicited  
6 commercial e-mail advertisement containing substantially similar  
7 content.

8 (k) “Internet” has the meaning set forth in paragraph (6) of  
9 subdivision (e) of Section 17538.

10 (l) “Preexisting or current business relationship,” as used in  
11 connection with the sending of a commercial e-mail  
12 advertisement, means that the recipient has made an inquiry and  
13 has provided his or her e-mail address, or has made an application,  
14 purchase, or transaction, with or without consideration, regarding  
15 products or services offered by the advertiser.

16 Commercial e-mail advertisements sent pursuant to the  
17 exemption provided for a preexisting or current business  
18 relationship shall provide the recipient of the commercial e-mail  
19 advertisement with the ability to “opt-out” from receiving further  
20 commercial e-mail advertisements by calling a toll-free telephone  
21 number or by sending an “unsubscribe” e-mail to the advertiser  
22 offering the products or services in the commercial e-mail  
23 advertisement. This opt-out provision does not apply to recipients  
24 who are receiving free e-mail service with regard to commercial  
25 e-mail advertisements sent by the provider of the e-mail service.

26 (m) “Recipient” means the addressee of an unsolicited  
27 commercial e-mail advertisement. If an addressee of an  
28 unsolicited commercial e-mail advertisement has one or more  
29 e-mail addresses to which an unsolicited commercial e-mail  
30 advertisement is sent, the addressee shall be deemed to be a  
31 separate recipient for each e-mail address to which the e-mail  
32 advertisement is sent.

33 (n) “Routine transmission” means the transmission, routing,  
34 relaying, handling, or storing of an electronic mail message  
35 through an automatic technical process. “Routine transmission”  
36 shall not include the sending, or the knowing participation in the  
37 sending, of unsolicited commercial e-mail advertisements.

38 (o) “Unsolicited commercial e-mail advertisement” means a  
39 commercial e-mail advertisement sent to a recipient who meets  
40 both of the following criteria:



1 (1) The recipient has not provided direct consent to receive  
2 advertisements from the advertiser.

3 (2) The recipient does not have a preexisting or current  
4 business relationship, as defined in subdivision (I), with the  
5 advertiser promoting the lease, sale, rental, gift offer, or other  
6 disposition of any property, goods, services, or extension of credit.

7 SEC. 15. Section 17538.45 of the Business and Professions  
8 Code is amended to read:

9 17538.45. (a) For purposes of this section, the following  
10 words have the following meanings:

11 (1) “Electronic mail advertisement” means any electronic  
12 mail message, the principal purpose of which is to promote,  
13 directly or indirectly, the sale or other distribution of goods or  
14 services to the recipient.

15 (2) “Unsolicited electronic mail advertisement” means any  
16 electronic mail advertisement that meets both of the following  
17 requirements:

18 (A) It is addressed to a recipient with whom the initiator does  
19 not have an existing business or personal relationship.

20 (B) It is not sent at the request of or with the express consent of  
21 the recipient.

22 (3) “Electronic mail service provider” means any business or  
23 organization qualified to do business in California that provides  
24 registered users the ability to send or receive electronic mail  
25 through equipment located in this state and that is an intermediary  
26 in sending or receiving electronic mail.

27 (4) “Initiation” of an unsolicited electronic mail  
28 advertisement refers to the action by the initial sender of the  
29 electronic mail advertisement. It does not refer to the actions of  
30 any intervening electronic mail service provider that may handle  
31 or retransmit the electronic message.

32 (5) “Registered user” means any individual, corporation, or  
33 other entity that maintains an electronic mail address with an  
34 electronic mail service provider.

35 (b) No registered user of an electronic mail service provider  
36 shall use or cause to be used that electronic mail service provider’s  
37 equipment located in this state in violation of that electronic mail  
38 service provider’s policy prohibiting or restricting the use of its  
39 service or equipment for the initiation of unsolicited electronic  
40 mail advertisements.

1 (c) No individual, corporation, or other entity shall use or cause  
2 to be used, by initiating an unsolicited electronic mail  
3 advertisement, an electronic mail service provider's equipment  
4 located in this state in violation of that electronic mail service  
5 provider's policy prohibiting or restricting the use of its equipment  
6 to deliver unsolicited electronic mail advertisements to its  
7 registered users.

8 (d) An electronic mail service provider shall not be required to  
9 create a policy prohibiting or restricting the use of its equipment  
10 for the initiation or delivery of unsolicited electronic mail  
11 advertisements.

12 (e) Nothing in this section shall be construed to limit or restrict  
13 the rights of an electronic mail service provider under Section  
14 230(c)(1) of Title 47 of the United States Code, ~~or~~ any decision of  
15 an electronic mail service provider to permit or to restrict access  
16 to or use of its system, or any exercise of its editorial function.

17 (f) (1) In addition to any other action available under law, any  
18 electronic mail service provider whose policy on unsolicited  
19 electronic mail advertisements is violated as provided in this  
20 section may bring a civil action to recover the actual monetary loss  
21 suffered by that provider by reason of that violation, or liquidated  
22 damages of fifty dollars (\$50) for each electronic mail message  
23 initiated or delivered in violation of this section, up to a maximum  
24 of twenty-five thousand dollars (\$25,000) per day, whichever  
25 amount is greater.

26 (2) In any action brought pursuant to paragraph (1), the court  
27 may award reasonable attorney's fees to a prevailing party.

28 (3) (A) In any action brought pursuant to paragraph (1), the  
29 electronic mail service provider shall be required to establish as an  
30 element of its cause of action that prior to the alleged violation, the  
31 defendant had actual notice of both of the following:

32 (i) The electronic mail service provider's policy on unsolicited  
33 electronic mail advertising.

34 (ii) The fact that the defendant's unsolicited electronic mail  
35 advertisements would use or cause to be used the electronic mail  
36 service provider's equipment located in this state.

37 (B) In this regard, the Legislature finds that with rapid  
38 advances in Internet technology, and electronic mail technology in  
39 particular, Internet service providers are already experimenting  
40 with embedding policy statements directly into the software

running on the computers used to provide electronic mail services in a manner that displays the policy statements every time an electronic mail delivery is requested. While the state of the technology does not support ~~such a~~ *this* finding at present, the Legislature believes that, in a given case at some future date, a showing that notice was supplied via electronic means between the sending and receiving computers could be held to constitute actual notice to the sender for purposes of this paragraph.

(4) (A) An electronic mail service provider who has brought an action against a party for a violation ~~subject to~~ *under* Section 17529.8 shall not bring an action against that party under this section for the same unsolicited commercial electronic mail advertisement.

(B) An electronic mail service provider who has brought an action against a party for a violation of this section shall not bring an action against that party under Section 17529.8 for the same unsolicited commercial electronic mail advertisement.

SEC. 16. Section 17550.30 of the Business and Professions Code is amended to read:

17550.30. (a) The Travel Seller Fund is hereby created in the State Treasury. All fines, penalties, and fees, including late fees, collected pursuant to this article, ~~or~~ *and* any moneys collected for a violation of this article or Article 2.7 (commencing with Section 17550.35), shall be deposited in the fund, and the ~~money~~ *moneys* in the fund may be expended only for the purposes specified in this article.

(b) All ~~money~~ *moneys* paid into the State Treasury and credited to the Travel Seller Fund shall be used by the Department of Justice in carrying out and enforcing the provisions of this article, including, but not limited to, the payment of salaries of Department of Justice personnel, contractors, or consultants, and the dissemination of information, including consumer education regarding this article and Article 2.7 (commencing with Section ~~17750.35~~ *17550.35*).

(c) The sum of three hundred ninety-five thousand dollars (\$395,000) is hereby appropriated from the Travel Seller Fund to the Department of Justice for purposes of the Sellers of Travel Program established pursuant to Article 2.6 (commencing with Section 17550).

1 SEC. 17. Section 17593 of the Business and Professions Code  
2 is amended to read:

3 17593. (a) The Attorney General, a district attorney, or a city  
4 attorney may bring a civil action in any court of competent  
5 jurisdiction against a telephone solicitor to enforce the article and  
6 to obtain any one or more of the following remedies:

7 (1) An order to enjoin the violation.

8 (2) A civil penalty of up to the penalty amount that the Federal  
9 Trade Commission may seek pursuant to ~~15 U.S.C. See.~~  
10 ~~45(m)(1)(A)~~ *subparagraph (A) of paragraph (1) of subsection (m)*  
11 *of Section 45 of Title 15 of the United States Code* as specified in  
12 ~~16 C.F.R. 1.98~~ *Section 1.98 of Title 16 of the Code of Federal*  
13 *Regulations.*

14 (3) Any other relief that the court deems proper.

15 (b) Any person who has received a telephone solicitation that  
16 is prohibited by Section 17592, or whose telephone number was  
17 used in violation of ~~subdivision (f) of~~ Section 17591, may bring  
18 a civil action in small claims court for an injunction or order to  
19 prevent further violations. If a person obtains an injunction or  
20 order under this subdivision and service of the injunction or order  
21 is properly effected, a person who thereafter receives further  
22 solicitations in violation of the injunction or order within 30 days  
23 after service of the initial injunction or order, may file a subsequent  
24 action in small claims court seeking enforcement of the injunction  
25 or order and a civil penalty to be awarded to the person in an  
26 amount up to one thousand dollars (\$1,000). For purposes of this  
27 subdivision, a person's claims may not be aggregated to establish  
28 jurisdiction in a court other than small claims court. For purposes  
29 of this subdivision, a defendant is not required to personally  
30 appear, but may appear by affidavit or by written instrument.

31 (c) The rights, remedies, and penalties established by this  
32 article are in addition to the rights, remedies, or penalties  
33 established under other laws.

34 (d) It shall be an affirmative defense to any action brought  
35 under this article that the violation was accidental and in violation  
36 of the telephone solicitor's policies and procedures and  
37 telemarketer instruction and training.

38 SEC. 18. Section 18824 of the Business and Professions  
39 Code, as amended by Section 2 of Chapter 515 of the Statutes of  
40 2003, is amended to read:



18824. (a) Except as provided in Sections 18646 and 18832, every person who conducts a contest or wrestling exhibition shall, within 72 hours after the determination of every contest or wrestling exhibition for which admission is charged and received, furnish to the commission a written report executed under penalty of perjury by one of the officers, showing the amount of the gross receipts, not to exceed two million dollars (\$2,000,000), and the gross price for the contest or wrestling~~-exhibit~~ exhibition charged directly or indirectly and no matter by whom received, for the sale, lease, or other exploitation of broadcasting and television rights of the contest or wrestling exhibition, and without any deductions, except for expenses incurred for one broadcast announcer, telephone line connection, and transmission mobile equipment facility, which may be deducted from the gross taxable base when those expenses are approved by the commission. The person shall also, within the same time, pay to the commission a fee of 5 percent, exclusive of any federal taxes paid thereon, of the amount paid for admission to the contest or wrestling exhibition, except that for any one boxing contest, the fee shall not exceed the amount of one hundred thousand dollars (\$100,000), and a fee of up to 5 percent of the gross price as described above for the sale, lease, or other exploitation of broadcasting or television rights thereof, except that in no case shall the fee be less than one thousand dollars (\$1,000). The minimum fee for an amateur contest or exhibition shall not be less than five hundred dollars (\$500). The amount of the gross receipts upon which the fee provided for in this section is calculated shall not include any assessments levied by the commission under Section 18711.

The fee on admission shall apply to the amount actually paid for admission and not to the regular established price.

No fee is due in the case of a person admitted free of charge. However, if the total number of persons admitted free of charge to a boxing, kickboxing, or martial arts contest or wrestling exhibition exceeds 25 percent of the total number of spectators, then a fee of one dollar (\$1) per complimentary ticket or pass used to gain admission to the contest shall be paid to the commission for each complimentary ticket or pass that exceeds the numerical total of 25 percent of the total number of spectators.

(b) If the fee on admissions for any one boxing contest exceeds seventy thousand dollars (\$70,000), the amount in excess of

1 seventy thousand dollars (\$70,000) shall be paid one-half to the  
2 commission and one-half to the Boxers' Pension Fund.

3 (c) As used in this section, "person" includes a promoter, club,  
4 individual, corporation, partnership, association, or other  
5 organization, and "wrestling exhibition" means a performance of  
6 wrestling skills and techniques by two or more individuals, to  
7 which admission is charged or which is broadcast or televised, in  
8 which the participating individuals are not required to use their  
9 best efforts in order to win, and for which the winner may have  
10 been selected before the performance commences.

11 (d) This section shall remain in effect only until January 1,  
12 2006, and as of that date is repealed, unless a later enacted statute,  
13 that is enacted before January 1, 2006, deletes or extends that date.

14 SEC. 19. Section 18824 of the Business and Professions  
15 Code, as added by Section 3 of Chapter 515 of the Statutes of 2003,  
16 is amended to read:

17 18824. (a) Except as provided in Sections 18646 and 18832,  
18 every person who conducts a contest or wrestling exhibition shall,  
19 within 72 hours after the determination of every contest or  
20 wrestling exhibition for which admission is charged and received,  
21 furnish to the commission a written report executed under penalty  
22 of perjury by one of the officers, showing the amount of the gross  
23 receipts for the contest or wrestling ~~exhibit~~ exhibition, and the  
24 gross price charged directly or indirectly and no matter by whom  
25 received, for the sale, lease, or other exploitation of broadcasting  
26 and television rights of the contest or wrestling exhibition, and  
27 without any deductions, except for expenses incurred for one  
28 broadcast announcer, telephone line connection, and transmission  
29 mobile equipment facility, which may be deducted from the gross  
30 taxable base when those expenses are approved by the  
31 commission. The person shall also, within the same time pay to the  
32 commission a ~~5-percent~~ 5-percent fee, exclusive of any federal  
33 taxes paid thereon, of the amount paid for admission to the contest  
34 or wrestling exhibition, and up to 5 percent of the gross price as  
35 described above for the sale, lease, or other exploitation of  
36 broadcasting or television rights thereof, except that in no case  
37 shall the fee be less than one thousand dollars (\$1,000).

38 (b) The minimum fee for an amateur contest or exhibition shall  
39 not be less than five hundred dollars (\$500). The amount of the  
40 gross receipts upon which the fee provided for in this section is

1 calculated shall not include any assessments levied by the  
2 commission under Section 18711.

3 The fee on admission shall apply to the amount actually paid for  
4 admission and not to the regular established price.

5 No fee is due in the case of a person admitted free of charge;  
6 ~~provided, however,~~ *except* if the total number of persons admitted  
7 free of charge to a boxing, kickboxing, or martial arts contest or  
8 wrestling exhibition exceeds 25 percent of the total number of  
9 spectators, then a fee of one dollar (\$1) per complimentary ticket  
10 or pass used to gain admission to the contest shall be paid to the  
11 commission for each complimentary ticket or pass that exceeds the  
12 numerical total of 25 percent of the total number of spectators.

13 (c) As used in this section, “person” includes a promoter, club,  
14 individual, corporation, partnership, association, or other  
15 organization, and “wrestling exhibition” means a performance of  
16 wrestling skills and techniques by two or more individuals, to  
17 which admission is charged or which is broadcast or televised, in  
18 which the participating individuals are not required to use their  
19 best efforts in order to win, and for which the winner may have  
20 been selected before the performance commences.

21 (d) This section shall become operative on January 1, 2006.

22 SEC. 20. Section 18897.73 of the Business and Professions  
23 Code is amended to read:

24 18897.73. Every agent contract, endorsement contract, or  
25 professional sports services contract entered into by a student  
26 athlete shall contain, in close proximity to the signature of the  
27 student athlete, a notice in at least 10-point boldface type stating:  
28

29 “WARNING TO THE STUDENT ATHLETE: WHEN YOU  
30 SIGN THIS CONTRACT, YOU LIKELY WILL  
31 IMMEDIATELY AND PERMANENTLY LOSE YOUR  
32 ELIGIBILITY TO COMPETE IN INTERSCHOLASTIC OR  
33 INTERCOLLEGIATE SPORTS. YOU MUST GIVE THE  
34 PRINCIPAL, PRESIDENT, OR OTHER CHIEF  
35 ADMINISTRATOR OF YOUR EDUCATIONAL  
36 INSTITUTION WRITTEN NOTICE THAT YOU HAVE  
37 ENTERED INTO THIS CONTRACT WITHIN 72 HOURS, OR  
38 BEFORE YOU PRACTICE FOR OR PARTICIPATE IN ANY  
39 INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS  
40 EVENT, WHICHEVER OCCURS FIRST. DO NOT SIGN THIS

1 CONTRACT UNTIL YOU HAVE READ IT AND FILLED IN  
2 ANY BLANK SPACES. YOU MAY CANCEL THIS  
3 CONTRACT BY NOTIFYING THE ATHLETE AGENT, OR  
4 OTHER PARTY TO THIS CONTRACT, IN WRITING OF  
5 YOUR DESIRE TO CANCEL NOT LATER THAN THE 15TH  
6 DAY AFTER THE DATE YOU SIGN THIS CONTRACT.  
7 HOWEVER, EVEN IF YOU CANCEL THIS CONTRACT, THE  
8 FEDERATION OR ASSOCIATION TO WHICH YOUR  
9 EDUCATIONAL INSTITUTION BELONGS MAY NOT  
10 RESTORE ~~YOU~~ *YOUR* ELIGIBILITY.”

11

12 SEC. 21. Section 22575 of the Business and Professions Code  
13 is amended to read:

14 22575. (a) An operator of a commercial Web site or online  
15 service that collects personally identifiable information through  
16 the Internet about individual consumers residing in California who  
17 use or visit its commercial Web site or online service shall  
18 conspicuously post its privacy policy on its Web site, or in the case  
19 of an operator of an online service, make that policy available in  
20 accordance with paragraph (5) of subdivision (b) of Section ~~22578~~  
21 22577. An operator shall be in violation of this subdivision only  
22 if the operator fails to post its policy within 30 days after being  
23 notified of noncompliance.

24 (b) The privacy policy required by subdivision (a) shall do all  
25 of the following:

26 (1) Identify the categories of personally identifiable  
27 information that the operator collects through the Web site or  
28 online service about individual consumers who use or visit its  
29 commercial Web site or online service and the categories of  
30 third-party persons or entities with whom the operator may share  
31 that personally identifiable information.

32 (2) If the operator maintains a process for an individual  
33 consumer who uses or visits its commercial Web site or online  
34 service to review and request changes to any of his or her  
35 personally identifiable information that is collected through the  
36 Web site or online service, provide a description of that process.

37 (3) Describe the process by which the operator notifies  
38 consumers who use or visit its commercial Web site or online  
39 service of material changes to the operator’s privacy policy for that  
40 Web site or online service.



(4) Identify its effective date.

SEC. 22. Section 25503.4 of the Business and Professions Code is amended to read:

25503.4. (a) Notwithstanding any other provision of this division, a winegrower, California winegrower's agent, wine importer, or any director, partner, officer, agent, or representative of that person, may conduct or participate in, and serve wine at, an instructional event for consumers held at a retailer's premises featuring wines produced by or for the winegrower or, imported by the wine importer, subject to the following conditions:

(1) No premium, gift, free goods, or other thing of value may be given away in connection with the instructional event by the winegrower, California winegrower's agent, wine importer, or retailer, except as authorized by this division.

(2) No alcoholic beverages may be given away in connection with the instructional event except that wine, taken from barrels or from tanks, may be sampled at the instructional event. For the purposes of this section, minimal amounts of the samples provided for tasting at the instructional event in addition to the wines being featured do not constitute a thing of value.

(3) No alcoholic beverages may be sold at the instructional event, except that orders for the sale of wine may be accepted by the winegrower if the sales transaction is completed at the winegrower's premises.

(b) Notwithstanding any other provision of this division, a winegrower, California winegrower's agent, or wine importer, in advance of an instructional event for consumers being held at a retailer's premises, may list in an advertisement the name and address of the retailer, the names of the wines being featured at the instructional event, and the time, date, and location of, and other information about, the instructional event, provided:

(1) The advertisement does not also contain the retail price of the wines.

(2) The listing of the retailer's name and address is the only reference to the retailer in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole. Pictures or illustrations of the retailer's premises and laudatory references to the retailer in ~~such~~ *these* advertisements are not hereby authorized.

(c) Notwithstanding any other provision of this division, the name and address of a winegrower, wine importer, or winegrower's agent licensee, the brand names of wine being featured, and the time, date, location, and other identifying information of a wine promotional lecture at retail premises may be listed in advance of the event in an advertisement of the off-sale or on-sale retail licensee.

(d) Nothing in this section authorizes a winegrower, wine importer, or winegrower's agent licensee to share in the costs, if any, of the retailer licensee's advertisement.

(e) Nothing in this section authorizes any person to consume any alcoholic beverage on any premises licensed with an off-sale retail license.

SEC. 23. Section 51.10 of the Civil Code is amended to read:

51.10. (a) Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. A business establishment may establish and preserve housing for senior citizens, pursuant to Section 51.11, except housing as to which Section 51.11 is preempted by the prohibition in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations against discrimination on the basis of familial status.

(b) This section is intended to clarify the holdings in *Marina Point, Ltd.; v. Wolfson* (1982); 30 Cal.3d 721, and *O'Connor v. Village Green Owners Association* (1983); 33 Cal.3d 790.

(c) This section shall only apply to the County of Riverside.

SEC. 24. Section 56.26 of the Civil Code is amended to read:

56.26. (a) No person or entity engaged in the business of furnishing administrative services to programs ~~which~~ *that* provide payment for health care services shall knowingly use, disclose, or permit its employees or agents to use ~~of~~ *or* disclose medical information possessed in connection with performing administrative functions for ~~such~~ a program, except as reasonably necessary in connection with the administration or maintenance of the program, or as required by law, or with an authorization.

(b) An authorization required by this section shall be in the same form as described in Section 56.21, except that "third party administrator" shall be substituted for "employer" wherever it appears in Section 56.21.



1 (c) This section shall not apply to any person or entity that is  
2 subject to the Insurance Information Privacy Act or to Chapter 2  
3 (commencing with Section 56.10) or Chapter 3 (commencing with  
4 Section 56.20).

5 SEC. 25. Section 800.100 of the Civil Code is amended to  
6 read:

7 800.100. (a) When the owner of a floating home marina  
8 enters into a written listing agreement with a licensed real estate  
9 broker, as defined in Article 1 (commencing with Section 10130)  
10 of Chapter 2 of Part 1 of Division 4 of the Business and Professions  
11 Code, for the sale of the marina or offers to sell the marina to any  
12 party, the owner shall provide written notice by first-class mail or  
13 by personal delivery to the president, secretary, and treasurer of the  
14 resident organization, not less than 30 days but no more than one  
15 year prior to entering into any written listing agreement for the sale  
16 of the marina, or making any offer to sell the marina to any party.  
17 An offer to sell a marina shall not be construed as an offer under  
18 this subdivision unless it is initiated by the marina owner or his or  
19 her agent.

20 (b) An owner of a floating home marina is not required to  
21 comply with subdivision (a) unless the following conditions are  
22 met:

23 (1) The resident organization has first furnished the marina  
24 owner or marina manager a written notice of the name and address  
25 of the president, secretary, and treasurer of the resident  
26 organization to whom the notice of sale shall be given.

27 (2) The resident organization has first notified the marina  
28 owner or manager in writing that the marina residents are  
29 interested in purchasing the marina. The initial notice by the  
30 resident organization shall be made prior to a written listing or  
31 offer to sell the marina by the marina owner, and the resident  
32 organization shall give subsequent notice once each year thereafter  
33 that the marina residents are interested in purchasing the marina.

34 (3) The resident organization has furnished the marina owner  
35 or marina manager a written notice, within five days, of any  
36 change in the name or address of the officers of the resident  
37 organization to whom the notice of sale shall be given.

38 (c) Nothing in this section affects the validity of title to real  
39 property transferred in violation of this section, although a  
40 violation shall subject the seller to civil action pursuant to Article



1 9 (commencing with Section 800.200) by homeowner residents of  
2 the marina or by the resident organization.

3 (d) Nothing in this section affects the ability of a licensed real  
4 estate broker to collect a commission pursuant to an executed  
5 contract between the broker and the floating home marina owner.

6 (e) This section does not apply to any of the following:

7 (1) Any sale or other transfer by a marina owner who is a  
8 natural person to any relation specified in Section 6401 or 6402 of  
9 the Probate Code.

10 (2) Any transfer by gift, devise, or operation of law.

11 (3) Any transfer by a corporation to an affiliate. As used in this  
12 paragraph, “affiliate” means any shareholder of the transferring  
13 corporation, any corporation or entity ~~owner~~ *owned* or controlled,  
14 directly or indirectly, by the transferring corporation, or any other  
15 corporation or entity controlled, directly or indirectly, by any  
16 shareholder of the transferring corporation.

17 (4) Any transfer by a partnership to any of its partners.

18 (5) Any conveyance resulting from the judicial or nonjudicial  
19 foreclosure of a mortgage or deed of trust encumbering a floating  
20 home marina or any deed given in lieu of such a foreclosure.

21 (6) Any sale or transfer between or among joint tenants or  
22 tenants in common owning a floating home marina.

23 (7) The purchase of a floating home marina by a governmental  
24 entity under its powers of eminent domain.

25 SEC. 26. Section 1102.16 of the Civil Code is amended to  
26 read:

27 1102.16. The disclosure of the existence of any window  
28 security bars and any safety release mechanism on those window  
29 security bars shall be made pursuant to Section 1102.6 or ~~1106.6a~~  
30 *1102.6a* of the Civil Code.

31 SEC. 27. Section 1103 of the Civil Code is amended to read:

32 1103. (a) Except as provided in Section 1103.1, this article  
33 applies to the transfer by sale, exchange, installment land sale  
34 contract, as defined in Section 2985, lease with an option to  
35 purchase, any other option to purchase, or ground lease coupled  
36 with improvements, of any real property described in subdivision  
37 (c), or residential stock cooperative, improved with or consisting  
38 of not less than one nor more than four dwelling units.

39 (b) Except as provided in Section 1103.1, this article shall  
40 apply to a resale transaction entered into on or after January 1,

2000, for a manufactured home, as defined in Section 18007 of the Health and Safety Code, that is classified as personal property intended for use as a residence, or a mobilehome, as defined in Section 18008 of the Health and Safety Code, that is classified as personal property intended for use as a residence, if the real property on which the manufactured home or mobilehome is located is real property described in subdivision (c).

(c) This article shall apply to the transactions described in subdivisions (a) and (b) only if the transferor or his or her agent ~~are~~ is required by one or more of the following to disclose the property's location within a hazard zone:

(1) A person who is acting as an agent for a transferor of real property that is located within a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within a special flood hazard area if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within a special flood hazard area.

(B) The local jurisdiction has compiled a list, by parcel, of properties that are within the special flood hazard area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(2) A person who is acting as an agent for a transferor of real property that is located within an area of potential flooding designated pursuant to Section 8589.5 of the Government Code, or the transferor if he or she is acting without an agent, shall disclose to any prospective transferee the fact that the property is located within an area of potential flooding if either:

(A) The transferor, or the transferor's agent, has actual knowledge that the property is within an inundation area.

(B) The local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area and a notice has been posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the parcel list.

(3) A transferor of real property that is located within a very high fire hazard severity zone, designated pursuant to Section

1 51178 of the ~~Public Resources~~ *Government Code*, shall disclose to  
2 any prospective transferee the fact that the property is located  
3 within a very high fire hazard severity zone and is subject to the  
4 requirements of Section 51182 of the *Government Code* if either:

5 (A) The transferor, or the transferor's agent, has actual  
6 knowledge that the property is within a very high fire hazard  
7 severity zone.

8 (B) A map that includes the property has been provided to the  
9 local agency pursuant to Section 51178 of the ~~Public Resources~~  
10 *Government Code* and a notice has been posted at the offices of the  
11 county recorder, county assessor, and county planning agency that  
12 identifies the location of the map and any information regarding  
13 changes to the map received by the local agency.

14 (4) A person who is acting as an agent for a transferor of real  
15 property that is located within an earthquake fault zone, designated  
16 pursuant to Section 2622 of the Public Resources Code, or the  
17 transferor if he or she is acting without an agent, shall disclose to  
18 any prospective transferee the fact that the property is located  
19 within a delineated earthquake fault zone if either:

20 (A) The transferor, or the transferor's agent, has actual  
21 knowledge that the property is within a delineated earthquake fault  
22 zone.

23 (B) A map that includes the property has been provided to the  
24 city or county pursuant to Section 2622 of the Public Resources  
25 Code and a notice has been posted at the offices of the county  
26 recorder, county assessor, and county planning agency that  
27 identifies the location of the map and any information regarding  
28 changes to the map received by the county.

29 (5) A person who is acting as an agent for a transferor of real  
30 property that is located within a seismic hazard zone, designated  
31 pursuant to Section 2696 of the Public Resources Code, or the  
32 transferor if he or she is acting without an agent, shall disclose to  
33 any prospective transferee the fact that the property is located  
34 within a seismic hazard zone if either:

35 (A) The transferor, or the transferor's agent, has actual  
36 knowledge that the property is within a seismic hazard zone.

37 (B) A map that includes the property has been provided to the  
38 city or county pursuant to Section 2696 of the Public Resources  
39 Code and a notice has been posted at the offices of the county  
40 recorder, county assessor, and county planning agency that

1 identifies the location of the map and any information regarding  
2 changes to the map received by the county.

3 (6) A transferor of real property that is located within a state  
4 responsibility area determined by the board, pursuant to Section  
5 4125 of the Public Resources Code, shall disclose to any  
6 prospective transferee the fact that the property is located within  
7 a wildland area that may contain substantial forest fire risks and  
8 hazards and is subject to the requirements of Section 4291 if either:

9 (A) The transferor, or the transferor's agent, has actual  
10 knowledge that the property is within a wildland fire zone.

11 (B) A map that includes the property has been provided to the  
12 city or county pursuant to Section 4125 of the Public Resources  
13 Code and a notice has been posted at the offices of the county  
14 recorder, county assessor, and county planning agency that  
15 identifies the location of the map and any information regarding  
16 changes to the map received by the county.

17 (d) Any waiver of the requirements of this article is void as  
18 against public policy.

19 SEC. 28. Section 1542 of the Civil Code is amended to read:

20 ~~Section Fifteen Hundred and Forty-two.~~

21 1542. A general release does not extend to claims which the  
22 creditor does not know or suspect to exist in his *or her* favor at the  
23 time of executing the release, which if known by him *or her* must  
24 have materially affected his *or her* settlement with the debtor.

25 SEC. 29. Section 1747.8 of the Civil Code is amended and  
26 renumbered to read:

27 ~~1747.8.~~

28 1747.08. (a) Except as provided in subdivision (c), no  
29 person, firm, partnership, association, or corporation which  
30 accepts credit cards for the transaction of business shall do either  
31 of the following:

32 (1) Request, or require as a condition to accepting the credit  
33 card as payment in full or in part for goods or services, the  
34 cardholder to write any personal identification information upon  
35 the credit card transaction form or otherwise.

36 (2) Request, or require as a condition to accepting the credit  
37 card as payment in full or in part for goods or services, the  
38 cardholder to provide personal identification information, which  
39 the person, firm, partnership, association, or corporation accepting

1 the credit card writes, causes to be written, or otherwise records  
2 upon the credit card transaction form or otherwise.

3 (3) Utilize, in any credit card transaction, a credit card form  
4 which contains preprinted spaces specifically designated for  
5 filling in any personal identification information of the cardholder.

6 (b) For purposes of this section “personal identification  
7 information,” means information concerning the cardholder,  
8 other than information set forth on the credit card, and including,  
9 but not limited to, the cardholder’s address and telephone number.

10 (c) Subdivision (a) does not apply in the following instances:

11 (1) ~~When~~ *If* the credit card is being used as a deposit to secure  
12 payment in the event of default, loss, damage, or other similar  
13 occurrence.

14 (2) Cash advance transactions.

15 (3) ~~When~~ *If* the person, firm, partnership, association, or  
16 corporation accepting the credit card is contractually obligated to  
17 provide personal identification information in order to complete  
18 the credit card transaction or is obligated to collect and record the  
19 personal identification information by federal law or regulation.

20 (4) ~~When~~ *If* personal identification information is required for  
21 a special purpose incidental but related to the individual credit card  
22 transaction, including, but not limited to, information relating to  
23 shipping, delivery, servicing, or installation of the purchased  
24 merchandise, or for special orders.

25 (d) This section does not prohibit any person, firm, partnership,  
26 association, or corporation from requiring the cardholder, as a  
27 condition to accepting the credit card as payment in full or in part  
28 for goods or services, to provide reasonable forms of positive  
29 identification, which may include a driver’s license or a California  
30 state identification card, or where one of these is not available,  
31 another form of photo identification, provided that none of the  
32 information contained thereon is written or recorded on the credit  
33 card transaction form or otherwise. If the cardholder pays for the  
34 transaction with a credit card number and does not make the credit  
35 card available upon request to verify the number, the cardholder’s  
36 driver’s license number or identification card number may be  
37 recorded on the credit card transaction form or otherwise.

38 (e) Any person who violates this section shall be subject to a  
39 civil penalty not to exceed two hundred fifty dollars (\$250) for the  
40 first violation and one thousand dollars (\$1,000) for each

1 subsequent violation, to be assessed and collected in a civil action  
2 brought by the person paying with a credit card, by the Attorney  
3 General, or by the district attorney or city attorney of the county  
4 or city in which the violation occurred. However, no civil penalty  
5 shall be assessed for a violation of this section if the defendant  
6 shows by a preponderance of the evidence that the violation was  
7 not intentional and resulted from a bona fide error made  
8 notwithstanding the defendant's maintenance of procedures  
9 reasonably adopted to avoid ~~such an~~ *that* error. When collected, the  
10 civil penalty shall be payable, as appropriate, to the person paying  
11 with a credit card who brought the action, or to the general fund  
12 of whichever governmental entity brought the action to assess the  
13 civil penalty.

14 (f) The Attorney General, or any district attorney or city  
15 attorney within his or her respective jurisdiction, may bring an  
16 action in the superior court in the name of the people of the State  
17 of California to enjoin violation of subdivision (a) and, upon notice  
18 to the defendant of not less than five days, to temporarily restrain  
19 and enjoin the violation. If it appears to the satisfaction of the court  
20 that the defendant has, in fact, violated subdivision (a), the court  
21 may issue an injunction restraining further violations, without  
22 requiring proof that any person has been damaged by the violation.  
23 In these proceedings, if the court finds that the defendant has  
24 violated subdivision (a), the court may direct the defendant to pay  
25 any or all costs incurred by the Attorney General, district attorney,  
26 or city attorney in seeking or obtaining injunctive relief pursuant  
27 to this subdivision.

28 (g) Actions for collection of civil penalties under subdivision  
29 (e) and for injunctive relief under subdivision (f) may be  
30 consolidated.

31 (h) The changes made to this section by Assembly Bill 1316 of  
32 the 1995–96 Regular Session of the Legislature apply only to  
33 credit card transactions entered into on and after January 1, 1996.  
34 Nothing in those changes shall be construed to affect any civil  
35 action which was filed before January 1, 1996.

36 SEC. 30. Section 1747.9 of the Civil Code is amended and  
37 renumbered to read:

38 ~~1747.9.~~

39 *1747.09.* (a) Except as provided in this section, no person,  
40 firm, partnership, association, corporation, or limited liability

1 company that accepts credit cards for the transaction of business  
2 shall print more than the last five digits of the credit card account  
3 number or the expiration date upon any receipt provided to the  
4 cardholder.

5 (b) This section shall apply only to receipts that are  
6 electronically printed and shall not apply to transactions in which  
7 the sole means of recording the person's credit card number is by  
8 handwriting or by an imprint or copy of the credit card.

9 (c) This section shall become operative on January 1, 2004,  
10 with respect to any cash register or other machine or device that  
11 electronically prints receipts for credit card transactions that is in  
12 use before January 1, 2001.

13 (d) This section shall become operative on January 1, 2001,  
14 with respect to any cash register or other machine or device that  
15 electronically prints receipts for credit card transactions that is first  
16 put into use on or after January 1, 2001.

17 SEC. 31. Section 1785.30 of the Civil Code is amended to  
18 read:

19 1785.30. Upon notification of the results of a consumer credit  
20 reporting agency's reinvestigation pursuant to Section 1785.16, ~~an~~  
21 a consumer may make a written demand on any person furnishing  
22 information to the consumer credit reporting agency to correct any  
23 information ~~which~~ that the consumer believes to be inaccurate.  
24 The person upon whom the written demand is made shall  
25 acknowledge the demand within 30 days. The consumer may  
26 require the consumer credit reporting agency to indicate on any  
27 subsequent reports issued during the dispute that the item or items  
28 of information are in dispute. If upon investigation the information  
29 is found to be inaccurate or incorrect, the consumer may require  
30 the consumer credit reporting agency to delete or correct the item  
31 or items of information within a reasonable time. If within 90 days  
32 the consumer credit reporting agency does not receive any  
33 information from the person requested to furnish the same or any  
34 communication relative to this information from this person, the  
35 consumer credit reporting agency shall delete the information  
36 from the report.

37 SEC. 32. Section 1786.24 of the Civil Code is amended to  
38 read:

39 1786.24. (a) If the completeness or accuracy of any item of  
40 information contained in his or her file is disputed by a consumer,



1 and the dispute is conveyed directly to the investigative consumer  
2 reporting agency by the consumer, the investigative consumer  
3 reporting agency shall, without charge, reinvestigate and record  
4 the current status of the disputed information or delete the item  
5 from the file in accordance with subdivision (c), before the end of  
6 the 30-day period beginning on the date on which the agency  
7 receives the notice of the dispute from the consumer.

8 (b) The agency shall notify any person who provided  
9 information in dispute at the address and in the manner specified  
10 by that person. The notice shall include all relevant information  
11 regarding the dispute that the investigative consumer reporting  
12 agency has received from the consumer. The agency shall also  
13 promptly provide to the person who provided the information in  
14 dispute all relevant information regarding the dispute that is  
15 received by the agency from the consumer during the  
16 reinvestigation.

17 (c) In conducting a reinvestigation, the investigative consumer  
18 reporting agency shall review and consider all relevant  
19 information submitted by the consumer with respect to the  
20 disputed item of information.

21 (d) Notwithstanding subdivision (a), an investigative  
22 consumer reporting agency may terminate a reinvestigation of  
23 information disputed by a consumer if the investigative consumer  
24 reporting agency reasonably determines that the dispute is  
25 frivolous or irrelevant, including by reason of a failure by a  
26 consumer to provide sufficient information to investigate the  
27 disputed information. Upon making a determination that a dispute  
28 is frivolous or irrelevant, the investigative consumer reporting  
29 agency shall notify the consumer, by mail or, if authorized by the  
30 consumer for that purpose, by any other means available to the  
31 agency. In this notification, the investigative consumer reporting  
32 agency shall state the specific reasons why it has determined that  
33 the consumer's dispute is frivolous or irrelevant and provide a  
34 description of any information required to investigate the disputed  
35 information, that may consist of a standardized form describing  
36 the general nature of the required information.

37 (e) If a reinvestigation is made and, after reinvestigation, the  
38 disputed item of information is found to be inaccurate, incomplete,  
39 or cannot be verified by the evidence submitted, the investigative  
40 consumer reporting agency shall promptly delete that information

1 from the consumer's file or modify the information, as  
2 appropriate, based on the results of the reinvestigation, and shall  
3 notify the consumer that the information has been deleted or  
4 modified. The consumer reporting agency shall also notify any and  
5 all sources from which the disputed information was obtained and  
6 inform them in writing of the reasons and results of the  
7 reinvestigation, and send a copy of this notification to the  
8 consumer. In accordance with subdivision (b) of Section 1786.10,  
9 the copy of the notification sent to the consumer need not reveal  
10 the identity of the source of information, unless otherwise required  
11 by law.

12 (f) No information may be reinserted in the file of a consumer  
13 after having been deleted pursuant to this section, unless the person  
14 who furnished the information verifies that the information is  
15 complete and accurate. If any information deleted from the file of  
16 a consumer is reinserted in the file, the investigative consumer  
17 reporting agency shall promptly notify the consumer of the  
18 reinsertion in writing or, if authorized by the consumer for that  
19 purpose, by any other means available to the agency. As part of,  
20 or in addition to, this notice, the investigative consumer reporting  
21 agency shall provide to the consumer in writing (1) a statement that  
22 the disputed information has been reinserted, (2) the name,  
23 address, and telephone number of any furnisher of information  
24 contacted or that contacted the investigative consumer reporting  
25 agency in connection with the reinsertion, and the telephone  
26 number of the furnisher, if reasonably available, and (3) a notice  
27 that the consumer has the right to a reinvestigation of the  
28 information reinserted by the investigative consumer reporting  
29 agency and to add a statement to his or her file disputing the  
30 accuracy or completeness of the information.

31 (g) An investigative consumer reporting agency shall provide  
32 notice to the consumer of the results of any reinvestigation under  
33 this section by mail or, if authorized by the consumer for that  
34 purpose, by other means available to the agency. The notice shall  
35 include (1) a statement that the reinvestigation is completed, (2) an  
36 investigative consumer report that is based on the consumer's file  
37 as that file is revised as a result of the reinvestigation, (3) a  
38 description or indication of any changes made in the investigative  
39 consumer report as a result of those revisions to the consumer's  
40 file, (4) a notice that, if requested by the consumer, a description



1 of the procedure used to determine the accuracy and completeness  
2 of the information shall be provided to the consumer by the  
3 investigative consumer reporting agency, including the name,  
4 business address, and telephone number of any furnisher of  
5 information contacted in connection with that information, (5) a  
6 notice that the consumer has the right to add a statement to the  
7 consumer's file disputing the accuracy or completeness of the  
8 information, and (6) a notice that the consumer has the right to  
9 request that the investigative consumer reporting agency furnish  
10 notifications under subdivision (k).

11 (h) The presence of information in the consumer's file that  
12 contradicts the contention of the consumer shall not, in and of  
13 itself, constitute reasonable grounds for believing the dispute is  
14 frivolous or irrelevant.

15 (i) If the investigative consumer reporting agency determines  
16 that the dispute is frivolous or irrelevant, or if the reinvestigation  
17 does not resolve the dispute, or if the information is reinserted into  
18 the file of a consumer pursuant to subdivision (f), the consumer  
19 may file a brief statement setting forth the nature of the dispute.  
20 The investigative consumer reporting agency may limit these  
21 statements to not more than 500 words if it provides the consumer  
22 with assistance in writing a clear summary of the dispute.

23 (j) If a statement of dispute is filed, the investigative consumer  
24 reporting agency shall, in any subsequent investigative consumer  
25 report containing the information in question, clearly note that the  
26 information is disputed by the consumer and shall include in the  
27 report either the statement of the consumer or a clear and accurate  
28 summary thereof.

29 (k) Following the deletion of information from the file of a  
30 consumer pursuant to this section, or following the filing of a  
31 dispute pursuant to subdivision (i), the investigative consumer  
32 reporting agency shall, at the request of the consumer, furnish  
33 notification that the item of information has been deleted or that  
34 the item of information is disputed. In the case of disputed  
35 information, the notification shall include the statement or  
36 summary of the dispute filed pursuant to subdivision (i). This  
37 notification shall be furnished to any person who has, within two  
38 years prior to the deletion or the filing of the dispute, received an  
39 investigative consumer report concerning the consumer for  
40 employment purposes, or who has, within one year of the deletion



1 or the filing of the dispute, received an investigative consumer  
2 report concerning the consumer for any other purpose, if these  
3 investigative consumer reports contained the deleted or disputed  
4 information, unless the consumer specifically requests in writing,  
5 that this notification not be given to all persons or to any specified  
6 persons. The investigative consumer reporting agency shall  
7 clearly and conspicuously disclose to the consumer his or her  
8 rights to make a request that this notification not be made.

9 (l) An investigative consumer reporting agency shall maintain  
10 reasonable procedures designed to prevent the reappearance in the  
11 file of a consumer and in investigative consumer reports  
12 information that has been deleted pursuant to this section and not  
13 reinserted pursuant to subdivision (f).

14 (m) If the ~~the~~ dispute of a consumer is resolved by deletion of  
15 the disputed information within three business days, beginning  
16 with the day the investigative consumer reporting agency receives  
17 notice of the dispute in accordance with subdivision (a), the  
18 investigative consumer reporting agency is exempt from  
19 requirements for further action under subdivisions (g), (i), and (j),  
20 if the agency: (1) provides prompt notice of the deletion to the  
21 consumer by telephone, (2) provides written confirmation of the  
22 deletion and a copy of an investigative consumer report of the  
23 consumer that is based on the file of a consumer after the deletion,  
24 and (3) includes, in the telephone notice or in a written notice that  
25 accompanies the confirmation and report, a statement of the  
26 consumer's right to request under subdivision (k) that the agency  
27 not furnish notifications under that subdivision.

28 (n) Any investigative consumer reporting agency that compiles  
29 and maintains files on consumers on a nationwide basis, as defined  
30 in the federal Fair Credit Reporting Act, as amended (15 U.S.C.  
31 Sec. 1681 et seq.), shall implement an automated system through  
32 which furnishers of information to that agency may report the  
33 results of a reinvestigation that finds incomplete or inaccurate  
34 information in the file of a consumer to other investigative  
35 consumer reporting agencies.

36 (o) All actions to be taken by an investigative consumer  
37 reporting agency under this section are governed by the applicable  
38 time periods specified in Section 611 of the federal Fair Credit  
39 Reporting Act, as amended (15 U.S.C. Sec. 1681i).



1 SEC. 33. Section 1789.21 of the Civil Code is amended to  
2 read:

3 1789.21. (a) Any buyer injured by a violation of this title or  
4 by the credit services organization's breach of a contract subject  
5 to this title may bring any action for recovery of damages, or for  
6 injunctive relief, or both. Judgment shall be entered for actual  
7 damages, but in no case less than the amount paid by the buyer to  
8 the credit services organization, plus reasonable attorney's fees  
9 and costs. An award, if the trial court deems it proper, may be  
10 entered for punitive damages.

11 (b) Any person, including, but not limited to, a consumer credit  
12 reporting agency, as defined in subdivision (d) of Section 1785.3,  
13 and any consumer of, or user of, a consumer credit report under the  
14 Consumer Credit Reporting Agencies Act (Title 1.6 (commencing  
15 with Section ~~1785.1~~ 1785.1)), and any furnisher of credit  
16 information under the Consumer Credit Reporting Agencies Act,  
17 may bring an action for the recovery of damages or for injunctive  
18 relief, or both, for a violation of this title. Any person bringing such  
19 an action who prevails in the action shall be entitled to reasonable  
20 attorney's fees and costs.

21 SEC. 34. Section 1798.83 of the Civil Code is amended to  
22 read:

23 1798.83. (a) Except as otherwise provided in subdivision (d),  
24 if a business has an established business relationship with a  
25 customer and has within the immediately preceding calendar year  
26 disclosed personal information that corresponds to any of the  
27 categories of personal information set forth in paragraph (6) of  
28 subdivision (e) to third parties, and if the business knows or  
29 reasonably should know that the third parties used the personal  
30 information for the third parties' direct marketing purposes, that  
31 business shall, after the receipt of a written or electronic mail  
32 request, or, if the business chooses to receive requests by toll-free  
33 telephone or facsimile numbers, a telephone or facsimile request  
34 from the customer, provide all of the following information to the  
35 customer free of charge:

36 (1) In writing or by electronic mail, a list of the categories set  
37 forth in paragraph (6) of subdivision (e) that correspond to the  
38 personal information disclosed by the business to third parties for  
39 the third parties' direct marketing purposes during the  
40 immediately preceding calendar year.

(2) In writing or by electronic mail, the names and addresses of all of the third parties that received personal information from the business for the third parties' direct marketing purposes during the preceding calendar year and, if the nature of the third parties' business cannot reasonably be determined from the third parties' name, examples of the products or services marketed, if known to the business, sufficient to give the customer a reasonable indication of the nature of the third parties' business.

(b) (1) A business required to comply with this section shall designate a mailing address, electronic mail address, or, if the business chooses to receive requests by telephone or facsimile, a toll-free telephone or facsimile number, to which customers may deliver requests pursuant to subdivision (a). A business required to comply with this section shall, at its election, do at least one of the following:

(A) Notify all agents and managers who directly supervise employees who regularly have contact with customers of the designated addresses or numbers or the means to obtain those addresses or numbers and instruct those employees that customers who inquire about the business' privacy practices or the business' compliance with this section shall be informed of the designated addresses or numbers or the means to obtain the addresses or numbers.

(B) Add to the home page of its Web site, a link either to a page titled "Your Privacy Rights" or to add the words "Your Privacy Rights," to the home page's link to the business' privacy policy. If the business elects to add the words "Your Privacy Rights" to the link to the business' privacy policy, the words "Your Privacy Rights" shall be in the same style and size of the link to the business' privacy policy. If the business does not display a link to its privacy policy on the home page of its Web site, or does not have a privacy policy, the words "Your Privacy Rights" shall be written in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language. The first page of the link shall describe a customer's rights pursuant to this section and shall provide the designated mailing address, e-mail address, as required, or toll-free telephone number or facsimile number, as appropriate. If the business elects to add the words "Your



California Privacy Rights” to the home page’s link to the business’s *business*’ privacy policy in a manner that complies with this subdivision, and the first page of the link describes a customer’s rights pursuant to this section, and provides the designated mailing address, electronic mailing address, as required, or toll-free telephone or facsimile number, as appropriate, the business need not respond to requests that are not received at one of the designated addresses or numbers.

(C) Make the designated addresses or numbers, or means to obtain the designated addresses or numbers, readily available upon request of a customer at every place of business in California where the business or its agents regularly have contact with customers.

The response to a request pursuant to this section received at one of the designated addresses or numbers shall be provided within 30 days. Requests received by the business at other than one of the designated addresses or numbers shall be provided within a reasonable period, in light of the circumstances related to how the request was received, but not to exceed 150 days from the date received.

(2) A business that is required to comply with this section and Section 6803 of Title 15 of the United States Code may comply with this section by providing the customer the disclosure required by Section 6803 of Title 15 of the United States Code, but only if the disclosure also complies with this section.

(3) A business that is required to comply with this section is not obligated to provide information associated with specific individuals and may provide the information required by this section in standardized format.

(c) (1) A business that is required to comply with this section is not obligated to do so in response to a request from a customer more than once during the course of any calendar year. A business with fewer than 20 full-time or part-time employees is exempt from the requirements of this section.

(2) If a business that is required to comply with this section adopts and discloses to the public, in its privacy policy, a policy of not disclosing personal information of customers to third parties for the third parties’ direct marketing purposes unless the customer first affirmatively agrees to that disclosure, or of not disclosing the personal information of customers to third parties for the third



1 parties' direct marketing purposes if the customer has exercised an  
2 option that prevents that information from being disclosed to third  
3 parties for those purposes, as long as the business maintains and  
4 discloses the policies, the business may comply with subdivision  
5 (a) by notifying the customer of his or her right to prevent  
6 disclosure of personal information, and providing the customer  
7 with a ~~cost-free~~ *cost-free* means to exercise that right.

8 (d) The following are among the disclosures not deemed to be  
9 disclosures of personal information by a business for a third  
10 parties' direct marketing purposes for purposes of this section:

11 (1) Disclosures between a business and a third party pursuant  
12 to contracts or arrangements pertaining to any of the following:

13 (A) The processing, storage, management, or organization of  
14 personal information, or the performance of services on behalf of  
15 the business during which personal information is disclosed, if the  
16 third party that processes, stores, manages, or organizes the  
17 personal information does not use the information for a third  
18 party's direct marketing purposes and does not disclose the  
19 information to additional third parties for their direct marketing  
20 purposes.

21 (B) Marketing products or services to customers with whom  
22 the business has an established business relationship where, as a  
23 part of the marketing, the business does not disclose personal  
24 information to third parties for the third parties' direct marketing  
25 purposes.

26 (C) Maintaining or servicing accounts, including credit  
27 accounts and disclosures pertaining to the denial of applications  
28 for credit or the status of applications for credit and processing  
29 bills or insurance claims for payment.

30 (D) Public record information relating to the right, title, or  
31 interest in real property or information relating to property  
32 characteristics, as defined in Section 408.3 of the Revenue and  
33 Taxation Code, obtained from a governmental agency or entity or  
34 from a multiple listing service, as defined in Section 1087, and not  
35 provided directly by the customer to a business in the course of an  
36 established business relationship.

37 (E) Jointly offering a product or service pursuant to a written  
38 agreement with the third party that receives the personal  
39 information, provided that all of the following requirements are  
40 met:

1 (i) The product or service offered is a product or service of, and  
2 is provided by, at least one of the businesses that is a party to the  
3 written agreement.

4 (ii) The product or service is jointly offered, endorsed, or  
5 sponsored by, and clearly and conspicuously identifies for the  
6 customer, the businesses that disclose and receive the disclosed  
7 personal information.

8 (iii) The written agreement provides that the third party that  
9 receives the personal information is required to maintain the  
10 confidentiality of the information and is prohibited from  
11 disclosing or using the information other than to carry out the joint  
12 offering or servicing of a product or service that is the subject of  
13 the written agreement.

14 (2) Disclosures to or from a consumer reporting agency of a  
15 customer's payment history or other information pertaining to  
16 transactions or experiences between the business and a customer  
17 if that information is to be reported in, or used to generate, a  
18 consumer report as defined in subdivision (d) of Section 1681a of  
19 Title 15 of the United States Code, and use of that information is  
20 limited by the federal Fair Credit Reporting Act (*15 U.S.C. Sec.*  
21 *1681 et seq.*).

22 (3) Disclosures of personal information by a business to a third  
23 party financial institution solely for the purpose of the business  
24 obtaining payment for a transaction in which the customer paid the  
25 business for goods or services with a check, credit card, charge  
26 card, or debit card, if the customer seeks the information required  
27 by subdivision (a) from the business obtaining payment, whether  
28 or not the business obtaining payment knows or reasonably should  
29 know that the third party financial institution has used the personal  
30 information for its direct marketing purposes.

31 (4) Disclosures of personal information between a licensed  
32 agent and its principal, if the personal information disclosed is  
33 necessary to complete, effectuate, administer, or enforce  
34 transactions between the principal and the agent, whether or not  
35 the licensed agent or principal also uses the personal information  
36 for direct marketing purposes, if that personal information is used  
37 by each of them solely to market products and services directly to  
38 customers with whom both have established business relationships  
39 as a result of the principal and agent relationship.

1 (5) Disclosures of personal information between a financial  
2 institution and a business that has a private label credit card,  
3 affinity card, retail installment contract, or co-branded card  
4 program with the financial institution, if the personal information  
5 disclosed is necessary for the financial institution to maintain or  
6 service accounts on behalf of the business with which it has a  
7 private label credit card, affinity card, retail installment contract,  
8 or branded card program, or to complete, effectuate, administer,  
9 or enforce customer transactions or transactions between the  
10 institution and the business, whether or not the institution or the  
11 business also uses the personal information for direct marketing  
12 purposes, if that personal information is used solely to market  
13 products and services directly to customers with whom both the  
14 business and the financial institution have established business  
15 relationships as a result of the private label credit card, affinity  
16 card, retail installment contract, or co-branded card program.

17 (e) For purposes of this section:

18 (1) “Customer” means an individual who is a resident of  
19 California who provides personal information to a business during  
20 the creation of, or throughout the duration of, an established  
21 business relationship if the business relationship is primarily for  
22 personal, family, or household purposes.

23 (2) “Direct marketing purposes” means the use of personal  
24 information to solicit or induce a purchase, rental, lease, or  
25 exchange of products, goods, property, or services directly to  
26 individuals by means of the mail, telephone, or electronic mail for  
27 their personal, family, or household purposes. The sale, rental,  
28 exchange, or lease of personal information for consideration to  
29 businesses is a direct marketing purpose of the business that sells,  
30 rents, exchanges, or obtains consideration for the personal  
31 information. “Direct marketing purposes” does not include the  
32 use of personal information (A) by bona fide tax exempt charitable  
33 or religious organizations to solicit charitable contributions, (B) to  
34 raise funds from and communicate with individuals regarding  
35 politics and government, (C) by a third party when the third party  
36 receives personal information solely as a consequence of having  
37 obtained for consideration permanent ownership of accounts that  
38 might contain personal information, or (D) by a third party when  
39 the third party receives personal information solely as a  
40 consequence of a single transaction where, as a part of the



1 transaction, personal information had to be disclosed in order to  
2 effectuate the transaction.

3 (3) “Disclose” means to disclose, release, transfer,  
4 disseminate, or otherwise communicate orally, in writing, or by  
5 electronic or any other means to any third party.

6 (4) “Employees who regularly have contact with customers”  
7 means employees whose contact with customers is not incidental  
8 to their primary employment duties, and whose duties do not  
9 predominantly involve ensuring the safety or health of the  
10 businesses customers. It includes, but is not limited to, employees  
11 whose primary employment duties are as cashier, clerk, customer  
12 service, sales, or promotion. It does not, by way of example,  
13 include employees whose primary employment duties consist of  
14 food or beverage preparation or service, maintenance and repair  
15 of the business’ facilities or equipment, direct involvement in the  
16 operation of a motor vehicle, aircraft, watercraft, amusement ride,  
17 heavy machinery or similar equipment, security, or participation  
18 in a theatrical, literary, musical, artistic, or athletic performance or  
19 contest.

20 (5) “Established business relationship” means a relationship  
21 formed by a voluntary, two-way communication between a  
22 business and a customer, with or without an exchange of  
23 consideration, for the purpose of purchasing, renting, or leasing  
24 real or personal property, or any interest therein, or obtaining a  
25 product or service from the business, if the relationship is ongoing  
26 and has not been expressly terminated by the business or the  
27 customer, or if the relationship is not ongoing, but is solely  
28 established by the purchase, rental, or lease of real or personal  
29 property from a business, or the purchase of a product or service,  
30 no more than 18 months have elapsed from the date of the  
31 purchase, rental, or lease.

32 (6) (A) The categories of personal information required to be  
33 disclosed pursuant to paragraph (1) of subdivision (a) are all of the  
34 following:

- 35 (i) Name and address.
- 36 (ii) Electronic mail address.
- 37 (iii) Age or date of birth.
- 38 (iv) Names of children.
- 39 (v) Electronic mail or other addresses of children.
- 40 (vi) Number of children.

- 1 (vii) The age or gender of children.
- 2 (viii) Height.
- 3 (ix) Weight.
- 4 (x) Race.
- 5 (xi) Religion.
- 6 (xii) Occupation.
- 7 (xiii) Telephone number.
- 8 (xiv) Education.
- 9 (xv) Political party affiliation.
- 10 (xvi) Medical condition.
- 11 (xvii) Drugs, therapies, or medical products or equipment used.
- 12 (xviii) The kind of product the customer purchased, leased, or
- 13 rented.
- 14 (xix) Real property purchased, leased, or rented.
- 15 (xx) The kind of service provided.
- 16 (xxi) Social security number.
- 17 (xxii) Bank account number.
- 18 (xxiii) Credit card number.
- 19 (xxiv) Debit card number.
- 20 (xxv) Bank or investment account, debit card, or credit card
- 21 balance.
- 22 (xxvi) Payment history.
- 23 (xxvii) Information pertaining to the customer's
- 24 creditworthiness, assets, income, or liabilities.
- 25 (B) If a list, description, or grouping of customer names or
- 26 addresses is derived using any of these categories, and is disclosed
- 27 to a third party for direct marketing purposes in a manner that
- 28 permits the third party to identify, determine, or extrapolate any
- 29 other personal information from which the list was derived, and
- 30 that personal information when it was disclosed identified,
- 31 described, or was associated with an individual, the categories set
- 32 forth in this subdivision that correspond to the personal
- 33 information used to derive the list, description, or grouping shall
- 34 be considered personal information for purposes of this section.
- 35 (7) "Personal information" as used in this section means any
- 36 information that when it was disclosed identified, described, or
- 37 was able to be associated with an individual and includes all of the
- 38 following:
- 39 (A) An individual's name and address.
- 40 (B) Electronic mail address.



- 1 (C) Age or date of birth.
- 2 (D) Names of children.
- 3 (E) Electronic mail or other addresses of children.
- 4 (F) Number of children.
- 5 (G) The age or gender of children.
- 6 (H) Height.
- 7 (I) Weight.
- 8 (J) Race.
- 9 (K) Religion.
- 10 (L) Occupation.
- 11 (M) Telephone number.
- 12 (N) Education.
- 13 (O) Political party affiliation.
- 14 (P) Medical condition.
- 15 (Q) Drugs, therapies, or medical products or equipment used.
- 16 (R) The kind of product the customer purchased, leased, or
- 17 rented.
- 18 (S) Real property purchased, leased, or rented.
- 19 (T) The kind of service provided.
- 20 (U) Social security number.
- 21 (V) Bank account number.
- 22 (W) Credit card number.
- 23 (X) Debit card number.
- 24 (Y) Bank or investment account, debit card, or credit card
- 25 balance.
- 26 (Z) Payment history.
- 27 (AA) Information pertaining to creditworthiness, assets,
- 28 income, or liabilities.
- 29 (8) “Third party” or “third parties” means one or more of the
- 30 following:
- 31 (A) A business that is a separate legal entity from the business
- 32 that has an established business relationship with a customer.
- 33 (B) A business that has access to a database that is shared
- 34 among businesses, if the business is authorized to use the database
- 35 for direct marketing purposes, unless the use of the database is
- 36 exempt from being considered a disclosure for direct marketing
- 37 purposes pursuant to subdivision (d).
- 38 (C) A business not affiliated by a common ownership or
- 39 common corporate control with the business required to comply
- 40 with subdivision (a).

1 (f) (1) Disclosures of personal information for direct  
2 marketing purposes between affiliated third parties that share the  
3 same brand name are exempt from the requirements of paragraph  
4 (1) of subdivision (a) unless the personal information disclosed  
5 corresponds to one of the following categories, in which case the  
6 customer shall be informed of those categories listed in this  
7 subdivision that correspond to the categories of personal  
8 information disclosed for direct marketing purposes and the third  
9 party recipients of personal information disclosed for direct  
10 marketing purposes pursuant to paragraph (2) of subdivision (a):

- 11 (A) Number of children.
- 12 (B) The age or gender of children.
- 13 (C) Electronic mail or other addresses of children.
- 14 (D) Height.
- 15 (E) Weight.
- 16 (F) Race.
- 17 (G) Religion.
- 18 (H) Telephone number.
- 19 (I) Medical condition.
- 20 (J) Drugs, therapies, or medical products or equipment used.
- 21 (K) Social security number.
- 22 (L) Bank account number.
- 23 (M) Credit card number.
- 24 (N) Debit card number.
- 25 (O) Bank or investment account, debit card, or credit card  
26 balance.

27 (2) If a list, description, or grouping of customer names or  
28 addresses is derived using any of these categories, and is disclosed  
29 to a third party or third parties sharing the same brand name for  
30 direct marketing purposes in a manner that permits the third party  
31 to identify, determine, or extrapolate the personal information  
32 from which the list was derived, and that personal information  
33 when it was disclosed identified, described, or was associated with  
34 an individual, any other personal information that corresponds to  
35 the categories set forth in this subdivision used to derive the list,  
36 description, or grouping shall be considered personal information  
37 for purposes of this section.

38 (3) If a business discloses personal information for direct  
39 marketing purposes to affiliated third parties that share the same  
40 brand name, the business that discloses personal information for





1 direct marketing purposes between affiliated third parties that  
2 share the same brand name may comply with the requirements of  
3 paragraph (2) of subdivision (a) by providing the overall number  
4 of affiliated companies that share the same brand name.

5 (g) The provisions of this section are severable. If any  
6 provision of this section or its application is held invalid, that  
7 invalidity shall not affect other provisions or applications that can  
8 be given effect without the invalid provision or application.

9 (h) This section does not apply to a financial institution that is  
10 subject to the California Financial Information Privacy Act  
11 (Division 1.2 (commencing with Section 4050) of the Financial  
12 Code) if the financial institution is in compliance with Sections  
13 4052, ~~4025~~ 4052.5, 4053, 4053.5 and 4054.6 of the Financial  
14 Code, as those sections read when they were chaptered on August  
15 28, 2003, and as subsequently amended by the Legislature or by  
16 initiative.

17 (i) This section shall become operative on January 1, 2005.

18 SEC. 35. Section 1798.85 of the Civil Code is amended to  
19 read:

20 1798.85. (a) Except as provided in subdivisions (b), (h), and  
21 (i), a person or entity may not do any of the following:

22 (1) Publicly post or publicly display in any manner an  
23 individual's social security number. "Publicly post" or "publicly  
24 display" means to intentionally communicate or otherwise make  
25 available to the general public.

26 (2) Print an individual's social security number on any card  
27 required for the individual to access products or services provided  
28 by the person or entity.

29 (3) Require an individual to transmit his or her social security  
30 number over the Internet, unless the connection is secure or the  
31 social security number is encrypted.

32 (4) Require an individual to use his or her social security  
33 number to access an Internet Web site, unless a password or unique  
34 personal identification number or other authentication device is  
35 also required to access the Internet Web site.

36 (5) Print an individual's social security number on any  
37 materials that are mailed to the individual, unless state or federal  
38 law requires the social security number to be on the document to  
39 be mailed. Notwithstanding this paragraph, social security  
40 numbers may be included in applications and forms sent by mail,

1 including documents sent as part of an application or enrollment  
2 process, or to establish, amend, or terminate an account, contract,  
3 or policy, or to confirm the accuracy of the social security number.  
4 A social security number that is permitted to be mailed under this  
5 section may not be printed, in whole or in part, on a postcard or  
6 other mailer not requiring an envelope, or visible on the envelope  
7 or without the envelope having been opened.

8 (b) Except as provided in subdivision (e), a person or entity that  
9 has used, prior to July 1, 2002, an individual's social security  
10 number in a manner inconsistent with subdivision (a), may  
11 continue using that individual's social security number in that  
12 manner on or after July 1, 2002, and a state or local agency that has  
13 used, prior to January 1, 2004, an individual's social security  
14 number in a manner inconsistent with subdivision (a), may  
15 continue using that individual's social security number in that  
16 manner on or after January 1, 2004, if all of the following  
17 conditions are met:

18 (1) The use of the social security number is continuous. If the  
19 use is stopped for any reason, subdivision (a) shall apply.

20 (2) The individual is provided an annual disclosure, that  
21 informs the individual that he or she has the right to stop the use  
22 of his or her social security number in a manner prohibited by  
23 subdivision (a).

24 (3) A written request by an individual to stop the use of his or  
25 her social security number in a manner prohibited by subdivision  
26 (a) is implemented within 30 days of the receipt of the request.  
27 There may not be a fee or charge for implementing the request.

28 (4) The person or entity does not deny services to an individual  
29 because the individual makes a written request pursuant to this  
30 subdivision.

31 (c) This section does not prevent the collection, use, or release  
32 of a social security number as required by state or federal law or  
33 the use of a social security number for internal verification or  
34 administrative purposes.

35 (d) This section does not apply to documents that are recorded  
36 or required to be open to the public pursuant to Chapter 3.5  
37 (commencing with Section 6250), Chapter 14 (commencing with  
38 Section 7150), or Chapter 14.5 (commencing with Section 7220)  
39 of Division 7 of Title 1 of, Article 9 (commencing with Section  
40 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, or Chapter



9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code. This section does not apply to records that are required by statute, case law, or California Rule of Court, to be made available to the public by entities provided for in Article VI of the California Constitution.

(e) (1) In the case of a health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor as defined in Section 56.05, or the provision by any person or entity of administrative or other services relative to health care or insurance products or services, including third-party administration or administrative services only, this section shall become operative in the following manner:

(A) On or before January 1, 2003, the entities listed in paragraph (1) of subdivision (e) shall comply with paragraphs (1), (3), (4), and (5) of subdivision (a) as these requirements pertain to individual policyholders or individual contractholders.

(B) On or before January 1, 2004, the entities listed in paragraph (1) of subdivision (e) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) as these requirements pertain to new individual policyholders or new individual contractholders and new groups, including new groups administered or issued on or after January 1, 2004.

(C) On or before July 1, 2004, the entities listed in paragraph (1) of subdivision (e) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) for all individual policyholders and individual contractholders, for all groups, and for all enrollees of the Healthy Families and Medi-Cal programs, except that for individual policyholders, individual contractholders, and groups in existence prior to January 1, 2004, the entities listed in paragraph (1) of subdivision (e) shall comply upon the renewal date of the policy, contract, or group on or after July 1, 2004, but no later than July 1, 2005.

(2) A health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, a contractor, or another person or entity as described in paragraph (1) of subdivision (e) shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this article are implemented on or before the dates specified in this section.

1 (3) Notwithstanding paragraph (2), the Director of the  
2 Department of Managed Health Care, pursuant to the authority  
3 granted under Section 1346 of the Health and Safety Code, or the  
4 Insurance Commissioner, pursuant to the authority granted under  
5 Section 12921 of the Insurance Code, and upon a determination of  
6 good cause, may grant extensions not to exceed six months for  
7 compliance by health care service plans and insurers with the  
8 requirements of this section when requested by the health care  
9 service plan or insurer. Any extension granted shall apply to the  
10 health care service plan or insurer's affected providers, pharmacy  
11 benefits manager, and contractors.

12 (f) If a federal law takes effect requiring the United States  
13 Department of Health and Human Services to establish a national  
14 unique patient health identifier program, a provider of health care,  
15 a health care service plan, a licensed health care professional, or  
16 a contractor, as those terms are defined in Section 56.05, that  
17 complies with the federal law shall be deemed in compliance with  
18 this section.

19 (g) A person or entity may not encode or embed a social  
20 security number in or on a card or document, including, but not  
21 limited to, using a bar code, chip, magnetic strip, or other  
22 technology, in place of removing the social security number, as  
23 required by this section.

24 (h) This section shall become operative, with respect to the  
25 University of California, in the following manner:

26 (1) On or before January 1, 2004, the University of California  
27 shall comply with paragraphs (1), (2), and (3) of subdivision (a).

28 (2) On or before January 1, 2005, the University of California  
29 shall comply with paragraphs (4) and (5) of subdivision (a).

30 (i) This section shall become operative with respect to the  
31 Franchise Tax Board on January 1, 2007.

32 (j) This section shall become operative with respect to the  
33 California community college districts on January 1, 2007.

34 (k) This section shall become operative with respect to the  
35 California State University system on July 1, 2005.

36 (l) This section shall become operative, with respect to the  
37 California Student Aid Commission and its auxiliary organization,  
38 in the following manner:



1 (1) On or before January 1, 2004, the commission and its  
2 auxiliary organization shall comply with paragraphs (1), (2), and  
3 (3) of subdivision (a).

4 (2) On or before January 1, 2005, the commission and its  
5 auxiliary organization shall comply with paragraphs (4) and (5) of  
6 subdivision (a).

7 SEC. 36. Section 1799.1b of the Civil Code is amended to  
8 read:

9 1799.1b. (a) Any credit card issuer that receives a change of  
10 address request, other than for a correction of a typographical  
11 error, from a cardholder who orders a replacement credit card  
12 within 60 days before or after that request is received shall send to  
13 that cardholder a change of address notification that is addressed  
14 to the cardholder at the cardholder's previous address of record. If  
15 the replacement credit card is requested prior to the effective date  
16 of the change of address, the notification shall be sent within 30  
17 days of the change of address request. If the replacement credit  
18 card is requested after the effective date of the change of address,  
19 the notification shall be sent within 30 days of the request for the  
20 replacement credit card.

21 (b) Any business entity that provides telephone accounts that  
22 receives a change of address request, other than for a correction of  
23 a typographical error, from an accountholder who orders new  
24 service, shall send to that accountholder a change of address  
25 notification that is addressed to the accountholder at the  
26 accountholder's previous address of record. The notification shall  
27 be sent within 30 days of the request for new service.

28 (c) The notice required pursuant to subdivision (a) or (b) may  
29 be given by telephone or e-mail communication if the credit card  
30 issuer or business entity that provides telephone accounts  
31 reasonably believes that it has the current telephone number or  
32 e-mail address for the accountholder or cardholder who has  
33 requested a change of address. If the notification is in writing it  
34 may not contain the consumer's account number, social security  
35 number, or other personal identifying information, but may  
36 contain the consumer's name, previous address, and new address  
37 of record. For business entities described in subdivision (b), the  
38 notification may also contain the accountholder's telephone  
39 number.

(d) A credit card issuer or a business entity that provides telephone accounts ~~are~~ is not required to send a change of address notification when a change of address request is made in person by a consumer who has presented valid identification, or is made by telephone and the requester has provided a unique alpha-numeric password.

(e) The following definitions shall apply to this section:

(1) "Credit account" has the same meaning as "credit card," as defined in subdivision (a) of Section 1747.02.

(2) "Telephone account" means an account with a telephone corporation, as defined in Section 234 of the Public Utilities Code.

SEC. 37. Section 1812.701 of the Civil Code is amended to read:

1812.701. (a) The notice required in this title may be changed only as necessary to reflect changes under the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) that would otherwise make the disclosure inaccurate.

(b) The type-size used in the disclosure shall be ~~in~~ at least the same type-size as that used to inform the debtor of his or her specific debt, but is not required to be larger than 12-point type.

SEC. 38. Section 1865 of the Civil Code is amended to read:

1865. (a) For purposes of this section, "hotel" means any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment, but it shall not include any residential hotel as defined in Section 50519 of the Health and Safety Code. "Innkeeper" means the owner or operator of a hotel, or the duly authorized agent or employee of ~~such~~ the owner or operator.

(b) For purposes of this section, "guest" means, and is specifically limited to, an occupant of a hotel whose occupancy is exempt, pursuant to subdivision (b) of Section 1940 ~~of the Civil Code~~, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 ~~of the Civil Code~~.

(c) In addition to, and not in derogation of, any other provision of law, every innkeeper shall have the right to evict a guest in the manner specified in this subdivision if the guest refuses or otherwise fails to fully depart the guest room at or before the innkeeper's posted checkout time on the date agreed to by the guest, but only if both of the following conditions are met:

(1) If the guest is provided written notice, at the time that he or she was received and provided accommodations by the innkeeper,

1 that the innkeeper needs that guest's room to accommodate an  
2 arriving person with a contractual right thereto, and that if the  
3 guest fails to fully depart at the time agreed to the innkeeper may  
4 enter the guest's guest room, take possession of the guest's  
5 property, re-key the door to the guest room, and make the guest  
6 room available to a new guest. The written notice shall be signed  
7 by the guest.

8 (2) At the time that the innkeeper actually undertakes to evict  
9 the guest as specified in this subdivision, the innkeeper in fact has  
10 a ~~contractual~~ *contractual* obligation to provide the guest room to  
11 an arriving person.

12 In the above cases, the innkeeper may enter the guest's guest  
13 room, take possession of the guest's property, re-key the door to  
14 the guest room, and make the guest room available to a new guest.  
15 The evicted guest shall be entitled to immediate possession of his  
16 or her property upon request therefor, subject to the rights of the  
17 innkeeper pursuant to Sections 1861 to 1861.28, inclusive.

18 (d) As pertains to a minor, the rights of an innkeeper include,  
19 but are not limited to, the following:

20 (1) Where a minor unaccompanied by an adult seeks  
21 accommodations, the innkeeper may require a parent or guardian  
22 of the minor, or another responsible adult, to assume, in writing,  
23 full liability for any and all proper charges and other obligations  
24 incurred by the minor for accommodations, food and beverages,  
25 and other services provided by or through the innkeeper, as well  
26 as for any and all injuries or damage caused by the minor to any  
27 person or property.

28 (2) Where a minor is accompanied by an adult, the innkeeper  
29 may require the adult to agree, in writing, not to leave any minor  
30 12 years of age or younger unattended on the innkeeper's premises  
31 at any time during their stay, and to control the minor's behavior  
32 during their stay so as to preserve the peace and quiet of the  
33 innkeeper's other guests and to prevent any injury to any person  
34 and damage to any property.

35 SEC. 39. Section 2945.3 of the Civil Code is amended to read:

36 2945.3. (a) Every contract shall be in writing and shall fully  
37 disclose the exact nature of the foreclosure consultant's services  
38 and the total amount and terms of compensation.

39 (b) The following notice, printed in at least 14-point boldface  
40 type and completed with the name of the foreclosure consultant,



1 shall be printed immediately above the statement required by  
2 subdivision (c):

3  
4 “NOTICE REQUIRED BY CALIFORNIA LAW

5  
6 \_\_\_\_\_ or anyone working

7 (Name)

8 for him or her CANNOT:

9 (1) Take any money from you or ask you for money

10 until \_\_\_\_\_ has

11 (Name)

12 completely finished doing everything he or she said he or she would do; and

13 (2) Ask you to sign or have you sign any lien, deed of trust, or deed.”

14  
15 (c) The contract shall be written in the same language as  
16 principally used by the foreclosure consultant to describe his *or her*  
17 services or to negotiate the contract; shall be dated and signed by  
18 the owner; and shall contain in immediate proximity to the space  
19 reserved for the owner’s signature a conspicuous statement in a  
20 size equal to at least 10-point ~~bold~~ *boldface* type, as follows: “You,  
21 the owner, may cancel this transaction at any time prior to  
22 midnight of the third business day after the date of this transaction.  
23 See the attached notice of cancellation form for an explanation of  
24 this right.”

25 (d) The contract shall contain on the first page, in a type size no  
26 smaller than that generally used in the body of the document, each  
27 of the following:

28 (1) The name and address of the foreclosure consultant to  
29 which the notice ~~or~~ of cancellation is to be mailed.

30 (2) The date the owner signed the contract.

31 (e) The contract shall be accompanied by a completed form in  
32 duplicate, captioned “notice of ~~cancellation~~, *cancellation*,”  
33 which shall be attached to the contract, shall be easily detachable,  
34 and shall contain in type of at least 10-point the following  
35 statement written in the same language as used in the contract:  
36

“NOTICE OF CANCELLATION

(Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

(Name of foreclosure consultant)

at (Address of foreclosure consultant’s place of business)

NOT LATER THAN MIDNIGHT OF (Date) .

I hereby cancel this transaction (Date) .

(Owner’s signature)

(f) The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation.

(g) Until the foreclosure consultant has complied with this section, the owner may cancel the contract.

SEC. 40. Section 2982 of the Civil Code is amended to read: 2982. Every conditional sale contract subject to this chapter shall contain the disclosures required by Regulation Z, whether or not Regulation Z applies to the transaction. In addition, to the extent applicable, the contract shall contain the other disclosures and notices required by, and shall satisfy the requirements and limitations of, this section. The disclosures required by subdivision (a) may be itemized or subtotaled to a greater extent than as required by that subdivision and shall be made together and in the sequence set forth in that subdivision. All other disclosures and notices may appear in the contract in any location or sequence and may be combined or interspersed with other provisions of the contract.

(a) The contract shall contain the following disclosures, as applicable, which shall be labeled “itemization of the amount financed”:

1 (1) (A) The cash price, exclusive of document preparation  
2 fees, taxes imposed on the sale, pollution control certification fees,  
3 prior credit or lease balance on property being traded in, and the  
4 amount charged for a service contract.

5 (B) The fee to be retained by the seller for document  
6 preparation.

7 (C) The fee charged by the seller for certifying that the motor  
8 vehicle complies with applicable pollution control requirements.

9 (D) Taxes imposed on the sale.

10 (E) The amount of any optional business partnership  
11 automation fee to register or transfer the vehicle, which shall be  
12 labeled “Optional DMV Electronic Filing Fee”. Fee.”

13 (F) The amount charged for a service contract.

14 (G) The prior credit or lease balance remaining on property  
15 being traded in, as required by paragraph (6). The disclosure  
16 required by this subparagraph shall be labeled “prior credit or  
17 lease balance (see downpayment and trade-in calculation).”

18 (H) Any charge for an optional debt cancellation agreement.

19 (I) The total cash price, which is the sum of subparagraphs (A)  
20 to (H), inclusive.

21 (2) Amounts paid to public officials for the following:

22 (A) Vehicle license fees.

23 (B) Registration, transfer, and titling fees.

24 (C) California tire fees imposed pursuant to Section 42885 of  
25 the Public Resources Code.

26 (3) The aggregate amount of premiums agreed, upon execution  
27 of the contract, to be paid for policies of insurance included in the  
28 contract, excluding the amount of any insurance premium  
29 included in the finance charge.

30 (4) The amount of the state fee for issuance of a certificate of  
31 compliance, noncompliance, exemption, or waiver pursuant to  
32 any applicable pollution control statute.

33 (5) A subtotal representing the sum of the foregoing items.

34 (6) The amount of the buyer’s downpayment itemized to show  
35 the following:

36 (A) The agreed value of the property being traded in.

37 (B) The prior credit or lease balance, if any, owing on the  
38 property being traded in.

39 (C) The net agreed value of the property being traded in, which  
40 is the difference between the amounts disclosed in subparagraphs

1 (A) and (B). If the prior credit or lease balance of the property  
2 being traded in exceeds the agreed value of the property, a negative  
3 number shall be stated.

4 (D) The amount of any portion of the downpayment to be  
5 deferred until not later than the due date of the second regularly  
6 scheduled installment under the contract and which is not subject  
7 to a finance charge.

8 (E) The amount of any manufacturer's rebate applied or to be  
9 applied to the downpayment.

10 (F) The remaining amount paid or to be paid by the buyer as a  
11 downpayment.

12 (G) The total downpayment. If the sum of subparagraphs (C)  
13 to (F), inclusive, is zero or more, that sum shall be stated as the total  
14 downpayment and no amount shall be stated as the prior credit or  
15 lease balance under subparagraph (G) of paragraph (1). If the sum  
16 of subparagraphs (C) to (F), inclusive, is less than zero, then that  
17 sum, expressed as a positive number, shall be stated as the prior  
18 credit or lease balance under subparagraph (G) of paragraph (1),  
19 and zero shall be stated as the total downpayment. The disclosure  
20 required by this subparagraph shall be labeled "total  
21 downpayment" and shall contain a descriptor indicating that if the  
22 total downpayment is a negative number, a zero shall be disclosed  
23 as the total downpayment and a reference made that the remainder  
24 shall be included in the disclosure required pursuant to  
25 subparagraph (G) of paragraph (1).

26 (7) The amount of any administrative finance charge, labeled  
27 "prepaid finance charge."

28 (8) The difference between item (5) and the sum of items (6)  
29 and (7), labeled "amount financed."

30 (b) No particular terminology is required to disclose the items  
31 set forth in subdivision (a) except as expressly provided in that  
32 subdivision.

33 (c) If payment of all or a portion of the downpayment is to be  
34 deferred, the deferred payment shall be reflected in the payment  
35 schedule disclosed pursuant to Regulation Z.

36 (d) If the downpayment includes property being traded in, the  
37 contract shall contain a brief description of that property.

38 (e) The contract shall contain the names and addresses of all  
39 persons to whom the notice required under Section 2983.2 and  
40 permitted under Sections 2983.5 and 2984 is to be sent.

1 (f) (1) If the contract includes a finance charge determined on  
2 the precomputed basis, the contract shall identify the method of  
3 computing the unearned portion of the finance charge in the event  
4 of prepayment in full of the buyer's obligation and contain a  
5 statement of the amount or method of computation of any charge  
6 that may be deducted from the amount of any unearned finance  
7 charge in computing the amount that will be credited to the  
8 obligation or refunded to the buyer. The method of computing the  
9 unearned portion of the finance charge shall be sufficiently  
10 identified with a reference to the actuarial method if the  
11 computation will be under that method. The method of computing  
12 the unearned portion of the finance charge shall be sufficiently  
13 identified with a reference to the Rule of 78's, the sum of the digits,  
14 or the sum of the periodic time balances method in all other cases,  
15 and those references shall be deemed to be equivalent for  
16 disclosure purposes.

17 (2) If the contract includes a finance charge which is  
18 determined on the simple-interest basis but provides for a  
19 minimum finance charge in the event of prepayment in full, the  
20 contract shall contain a statement of that fact and the amount of the  
21 minimum finance charge or its method of calculation.

22 (g) (1) If the contract includes a finance charge which is  
23 determined on the precomputed basis and provides that the  
24 unearned portion of the finance charge to be refunded upon full  
25 prepayment of the contract is to be determined by a method other  
26 than actuarial, the contract shall contain a notice, in at least  
27 10-point boldface type if the contract is printed, reading as  
28 follows: "Notice to buyer: (1) Do not sign this agreement before  
29 you read it or if it contains any blank spaces to be filled in. (2) You  
30 are entitled to a completely filled-in copy of this agreement. (3)  
31 You can prepay the full amount due under this agreement at any  
32 time and obtain a partial refund of the finance charge if it is \$1 or  
33 more. Because of the way the amount of this refund will be figured,  
34 the time when you prepay could increase the ultimate cost of credit  
35 under this agreement. (4) If you default in the performance of your  
36 obligations under this agreement, the vehicle may be repossessed  
37 and you may be subject to suit and liability for the unpaid  
38 indebtedness evidenced by this agreement."

39 (2) If the contract includes a finance charge which is  
40 determined on the precomputed basis and provides for the



1 actuarial method for computing the unearned portion of the  
2 finance charge upon prepayment in full, the contract shall contain  
3 a notice, in at least 10-point boldface type if the contract is printed,  
4 reading as follows: “Notice to buyer: (1) Do not sign this  
5 agreement before you read it or if it contains any blank spaces to  
6 be filled in. (2) You are entitled to a completely filled-in copy of  
7 this agreement. (3) You can prepay the full amount due under this  
8 agreement at any time and obtain a partial refund of the finance  
9 charge if it is \$1 or more. (4) If you default in the performance of  
10 your obligations under this agreement, the vehicle may be  
11 repossessed and you may be subject to suit and liability for the  
12 unpaid indebtedness evidenced by this agreement.”

13 (3) If the contract includes a finance charge which is  
14 determined on the simple-interest basis, the contract shall contain  
15 a notice, in at least 10-point boldface type if the contract is printed,  
16 reading as follows: “Notice to buyer: (1) Do not sign this  
17 agreement before you read it or if it contains any blank spaces to  
18 be filled in. (2) You are entitled to a completely filled-in copy of  
19 this agreement. (3) You can prepay the full amount due under this  
20 agreement at any time. (4) If you default in the performance of  
21 your obligations under this agreement, the vehicle may be  
22 repossessed and you may be subject to suit and liability for the  
23 unpaid indebtedness evidenced by this agreement.”

24 (h) The contract shall contain a notice in at least 8-point  
25 boldface type, acknowledged by the buyer, that reads as follows:  
26

27 “If you have a complaint concerning this sale, you should try  
28 to resolve it with the seller.

29 Complaints concerning unfair or deceptive practices or methods  
30 by the seller may be referred to the city attorney, the district  
31 attorney, or an investigator for the Department of Motor Vehicles,  
32 or any combination thereof.

33 After this contract is signed, the seller may not change the  
34 financing or payment terms unless you agree in writing to the  
35 change. You do not have to agree to any change, and it is an unfair  
36 or deceptive practice for the seller to make a unilateral change.  
37

38 \_\_\_\_\_  
39 Buyer’s Signature”  
40

(i) (1) The contract shall contain an itemization of any insurance included as part of the amount financed disclosed pursuant to paragraph (3) of subdivision (a) and of any insurance included as part of the finance charge. The itemization shall identify the type of insurance coverage and the premium charged therefor, and, if the insurance expires before the date of the last scheduled installment included in the repayment schedule, the term of the insurance shall be stated.

(2) If any charge for insurance, other than for credit life or disability, is included in the contract balance and disbursement of any part thereof is to be made more than one year after the date of the conditional sale contract, any finance charge on the amount to be disbursed after one year shall be computed from the month the disbursement is to be made to the due date of the last installment under the conditional sale contract.

(j) (1) Except for contracts in which the finance charge or portion thereof is determined by the simple-interest basis and the amount financed disclosed pursuant to paragraph (8) of subdivision (a) is more than two thousand five hundred dollars (\$2,500), the dollar amount of the disclosed finance charge may not exceed the greater of:

(A) (i) One and one-half percent on so much of the unpaid balance as does not exceed two hundred twenty-five dollars (\$225),  $1\frac{1}{6}$  percent on so much of the unpaid balance in excess of two hundred twenty-five dollars (\$225) as does not exceed nine hundred dollars (\$900) and five-sixths of 1 percent on so much of the unpaid balance in excess of nine hundred dollars (\$900) as does not exceed two thousand five hundred dollars (\$2,500); or

(ii) One percent of the entire unpaid balance; multiplied in either case by the number of months (computed on the basis of a full month for any fractional month period in excess of 15 days) elapsing between the date of the contract and the due date of the last installment; or

(B) If the finance charge is determined by the precomputed basis, twenty-five dollars (\$25); or

(C) If the finance charge or a portion thereof is determined by the simple-interest basis:

(i) Twenty-five dollars (\$25) if the unpaid balance does not exceed one thousand dollars (\$1,000).



1 (ii) Fifty dollars (\$50) if the unpaid balance exceeds one  
2 thousand dollars (\$1,000) but does not exceed two thousand  
3 dollars (\$2,000).

4 (iii) Seventy-five dollars (\$75) if the unpaid balance exceeds  
5 two thousand dollars (\$2,000).

6 (2) The holder of the contract may not charge, collect, or  
7 receive a finance charge which exceeds the disclosed finance  
8 charge, except to the extent (A) caused by the holder's receipt of  
9 one or more payments under a contract which provides for  
10 determination of the finance charge or a portion thereof on the  
11 365-day basis at a time or times other than as originally scheduled  
12 whether or not the parties enter into an agreement pursuant to  
13 Section 2982.3, (B) permitted by paragraph (2), (3), or (4) of  
14 subdivision (c) of Section 226.17 of Regulation Z, or (C) permitted  
15 by subdivisions (a) and (c) of Section 2982.8.

16 (3) If the finance charge or a portion thereof is determined by  
17 the simple-interest basis and the amount of the unpaid balance  
18 exceeds five thousand dollars (\$5,000), the holder of the contract  
19 may, in lieu of its right to a minimum finance charge under  
20 subparagraph (C) of paragraph (1), charge, receive, or collect on  
21 the date of the contract an administrative finance charge not to  
22 exceed seventy-five dollars (\$75), provided that the sum of the  
23 administrative finance charge and the portion of the finance charge  
24 determined by the simple-interest basis shall not exceed the  
25 maximum total finance charge permitted by subparagraph (A) of  
26 paragraph (1). Any administrative finance charge ~~which~~ *that* is  
27 charged, received, or collected by a holder shall be deemed a  
28 finance charge earned on the date of the contract.

29 (4) If a contract provides for unequal or irregular payments, or  
30 payments on other than a monthly basis, the maximum finance  
31 charge shall be at the effective rate provided for in paragraph (1),  
32 having due regard for the schedule of installments.

33 (k) The contract may provide that for each installment in  
34 default for a period of not less than 10 days the buyer shall pay a  
35 delinquency charge in an amount not to exceed in the aggregate 5  
36 percent of the delinquent installment, which amount may be  
37 collected only once on any installment regardless of the period  
38 during which it remains in default. Payments timely received by  
39 the seller under an extension or deferral agreement may not be  
40 subject to a delinquency charge unless the charge is permitted by

1 Section 2982.3. The contract may provide for reasonable  
2 collection costs and fees in the event of delinquency.

3 (I) Notwithstanding any provision of a contract to the contrary,  
4 the buyer may pay at any time before maturity the entire  
5 indebtedness evidenced by the contract without penalty. In the  
6 event of prepayment in full:

7 (1) If the finance charge was determined on the precomputed  
8 basis, the amount required to prepay the contract shall be the  
9 outstanding contract balance as of that date, provided, however,  
10 that the buyer shall be entitled to a refund credit in the amount of  
11 the unearned portion of the finance charge, except as provided in  
12 paragraphs (3) and (4). The amount of the unearned portion of the  
13 finance charge shall be at least as great a proportion of the finance  
14 charge, including any additional finance charge imposed pursuant  
15 to Section 2982.8 or other additional charge imposed because the  
16 contract has been extended, deferred, or refinanced, as the sum of  
17 the periodic monthly time balances payable more than 15 days  
18 after the date of prepayment bears to the sum of all the periodic  
19 monthly time balances under the schedule of installments in the  
20 contract or, if the contract has been extended, deferred, or  
21 refinanced, as so extended, deferred, or refinanced. If the amount  
22 of the refund credit is less than one dollar (\$1), no refund credit  
23 need be made by the holder. Any refund credit may be made in cash  
24 or credited to the outstanding obligations of the buyer under the  
25 contract.

26 (2) If the finance charge or a portion thereof was determined on  
27 the simple-interest basis, the amount required to prepay the  
28 contract shall be the outstanding contract balance as of that date,  
29 including any earned finance charges which are unpaid as of that  
30 date and, if applicable, the amount provided in paragraph (3), and  
31 provided further that in cases where a finance charge is determined  
32 on the 360-day basis, the payments theretofore received will be  
33 assumed to have been received on their respective due dates  
34 regardless of the actual dates on which the payments were  
35 received.

36 (3) Where the minimum finance charge provided by  
37 subparagraph (B) or subparagraph (C) of paragraph (1) of  
38 subdivision (j), if either is applicable, is greater than the earned  
39 finance charge as of the date of prepayment, the holder shall be  
40 additionally entitled to the difference.



1 (4) The provisions of this subdivision may not impair the right  
2 of the seller or the seller's assignee to receive delinquency charges  
3 on delinquent installments and reasonable costs and fees as  
4 provided in subdivision (k) or extension or deferral agreement  
5 charges as provided in Section 2982.3.

6 (5) Notwithstanding any provision of a contract to the contrary,  
7 whenever the indebtedness created by any contract is satisfied  
8 prior to its maturity through surrender of the motor vehicle,  
9 repossession of the motor vehicle, redemption of the motor vehicle  
10 after repossession, or any judgment, the outstanding obligation of  
11 the buyer shall be determined as provided in paragraph (1) or (2).  
12 Notwithstanding, the buyer's outstanding obligation shall be  
13 computed by the holder as of the date the holder recovers the value  
14 of the motor vehicle through disposition thereof or judgment is  
15 entered or, if the holder elects to keep the motor vehicle in  
16 satisfaction of the buyer's indebtedness, as of the date the holder  
17 takes possession of the motor vehicle.

18 (m) Notwithstanding any other provision of this chapter to the  
19 contrary, any information required to be disclosed in a conditional  
20 sale contract under this chapter may be disclosed in any manner,  
21 method, or terminology required or permitted under Regulation Z,  
22 as in effect at the time that disclosure is made, except that permitted  
23 by paragraph (2) of subdivision (c) of Section 226.18 of  
24 Regulation Z, provided that all of the requirements and limitations  
25 set forth in subdivision (a) of this section are satisfied. This chapter  
26 does not prohibit the disclosure in that contract of additional  
27 information required or permitted under Regulation Z, as in effect  
28 at the time that disclosure is made.

29 (n) If the seller imposes a fee for document preparation, the  
30 contract shall contain a disclosure that the fee is not a  
31 governmental fee.

32 (o) A seller may not impose an application fee for a transaction  
33 governed by this chapter.

34 (p) The seller or holder may charge and collect a fee not to  
35 exceed fifteen dollars (\$15) for the return by a depository  
36 institution of a dishonored check, negotiated order of withdrawal,  
37 or share draft issued in connection with the contract, if the contract  
38 so provides or if the contract contains a generalized statement that  
39 the buyer may be liable for collection costs incurred in connection  
40 with the contract.

(q) The contract shall disclose on its face, by printing the word “new” or “used” within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or a used vehicle, as defined in Section 665 of the Vehicle Code.

(r) The contract shall contain a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

**THERE IS NO COOLING OFF PERIOD**

California law does not provide for a “cooling off” or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud.

SEC. 41. Section 2985.8 of the Civil Code is amended to read:

2985.8. (a) Every lease contract shall be in writing and the print portion of the contract shall be printed in at least 8-point type and shall contain in a single document all of the agreements of the lessor and lessee with respect to the obligations of each party.

(b) At the top of the lease contract, a title which contains the words “LEASE CONTRACT” or “LEASE AGREEMENT” shall appear in at least 12-point ~~bold~~ *boldface* type.

(c) Every lease contract shall disclose all of the following:

(1) All of the information prescribed by Regulation M set forth in the manner required or permitted by Regulation M, whether or not Regulation M applies to the transaction.

(2) A separate statement labeled “Itemization of Gross Capitalized Cost” that shall appear immediately following or directly adjacent to the disclosures required to be segregated by Regulation M. The Itemization of Gross Capitalized Cost shall include all of the following and shall be circumscribed by a line:

1 (A) The agreed-upon value of the vehicle as equipped at the  
2 time of signing the lease.

3 (B) The agreed-upon value and a description of each accessory  
4 and item of optional equipment the lessor agrees to add to the  
5 vehicle after signing the lease.

6 (C) The premium for each policy of insurance.

7 (D) The amount charged for each service contract.

8 (E) Any charge for an optional debt cancellation agreement.

9 (F) Any outstanding prior credit or lease balance.

10 ~~(H)~~

11 (G) An itemization by type and agreed-upon value of each  
12 good or service included in the gross capitalized cost other than  
13 those items included in the disclosures required in subparagraphs  
14 (A) to ~~(G)~~ (F), inclusive.

15 (3) The vehicle identification number of the leased vehicle.

16 (4) A brief description of each vehicle or other property being  
17 traded in and the agreed-upon value thereof if the amount due at  
18 the time of signing the lease or upon delivery is paid in whole or  
19 in part with a net trade-in allowance or the “Itemization of Gross  
20 Capitalized Cost” includes any portion of the outstanding prior  
21 credit or lease balance from the trade-in property.

22 (5) The fee, if any, to be retained by the lessor for document  
23 preparation, which fee may not exceed forty-five dollars (\$45) and  
24 may not be represented as a governmental fee.

25 (6) The amount of any optional business partnership  
26 automation program fee to register or transfer the vehicle, which  
27 shall be labeled “Optional DMV Electronic Filing Fee.”

28 (d) Every lease contract shall contain, in at least 8-point ~~bold~~  
29 *boldface* type, above the space provided for the lessee’s signature  
30 and circumscribed by a line, the following notice: “(1) Do not sign  
31 this lease before you read it or if it contains any blank spaces to be  
32 filled in; (2) You are entitled to a completely filled in copy of this  
33 lease; (3) Warning—Unless a charge is included in this lease for  
34 public liability or property damage insurance, payment for that  
35 coverage is not provided by this lease.”

36 (e) Every lease contract shall contain, in at least 8-point ~~bold~~  
37 *boldface* type, on the first page of the contract and circumscribed  
38 by a line, the following notice:  
39

1 “THERE IS NO COOLING OFF PERIOD

2  
3 California law does not provide for a “cooling off” or other  
4 cancellation period for vehicle leases. Therefore, you cannot later  
5 cancel this lease simply because you change your mind, decided  
6 the vehicle costs too much, or wish you had acquired a different  
7 vehicle. You may cancel this lease only with the agreement of the  
8 lessor or for legal cause, such as fraud.”

9  
10 (f) Every lease contract shall contain, in at least 8-point ~~bold~~  
11 *boldface* type, the following notice: “You have the right to return  
12 the vehicle, and receive a refund of any payments made if the credit  
13 application is not approved, unless nonapproval results from an  
14 incomplete application or from incorrect information provided by  
15 you.”

16 (g) The lease contract shall be signed by the lessor and lessee,  
17 or their authorized representatives, and an exact copy of the fully  
18 executed lease contract shall be provided to the lessee at the time  
19 of signing.

20 (h) No motor vehicle shall be delivered under a lease contract  
21 subject to this chapter until the lessor provides to the lessee a fully  
22 executed copy of the lease contract.

23 (i) The lessor may not obtain the signature of the lessee to a  
24 contract when it contains blank spaces to be filled in after it has  
25 been signed.

26 (j) If the lease contract contains a provision that holds the lessee  
27 liable for the difference between (1) the adjusted capitalized cost  
28 disclosed in the lease contract reduced by the amounts described  
29 in subparagraph (A) of paragraph (5) of subdivision (b) of Section  
30 2987 and (2) the settlement proceeds of the lessee’s required  
31 insurance and deductible in the event of theft or damage to the  
32 vehicle that results in a total loss, the lease contract shall contain  
33 the following notice in at least ~~eight-point~~ *8-point* boldface type  
34 on the first page of the contract:

35  
36 “GAP LIABILITY NOTICE

37  
38 In the event of theft or damage to the vehicle that results in a total  
39 loss, there may be a GAP between the amount due upon early  
40 termination and the proceeds of your insurance settlement and

deductible. THIS LEASE PROVIDES THAT YOU ARE  
LIABLE FOR THE GAP AMOUNT. Optional coverage for the  
GAP amount may be offered for an additional price.”

SEC. 42. Section 2988.9 of the Civil Code is amended to read:  
2988.9. Reasonable attorney’s fees and costs shall be awarded  
to the prevailing party in any action on a lease contract subject to  
the provisions of this chapter regardless of whether the action is  
instituted by the lessor, assignee, or lessee. Where the defendant  
alleges in his *or her* answer that he *or she* tendered to the plaintiff  
the full amount to which he *or she* was entitled, and thereupon  
deposits in court, for the plaintiff, the amount so tendered, and the  
allegation is found to be true, then the defendant is deemed to be  
*the* prevailing party within the meaning of this ~~action~~ section.

SEC. 43. Section 715.010 of the Code of Civil Procedure is  
amended to read:

715.010. (a) A judgment for possession of real property may  
be enforced by a writ of possession of real property issued pursuant  
to Section 712.010. The application for the writ shall provide a  
place to indicate that the writ applies to all tenants, subtenants, if  
any, name *of* claimants, if any, and any other occupants of the  
premises.

(b) In addition to the information required by Section 712.020,  
the writ of possession of real property shall contain the following:

(1) A description of the real property, possession of which is to  
be delivered to the judgment creditor in satisfaction of the  
judgment.

(2) A statement that if the real property is not vacated within  
five days from the date of service of a copy of the writ on the  
occupant or, if the copy of the writ is posted, within five days from  
the date a copy of the writ is served on the judgment debtor, the  
levying officer will remove the occupants from the real property  
and place the judgment creditor in possession.

(3) A statement that any personal property, except a  
mobilehome, remaining on the real property after the judgment  
creditor has been placed in possession will be sold or otherwise  
disposed of in accordance with Section 1174 ~~of the Code of Civil~~  
~~Procedure~~ unless the judgment debtor or other owner pays the  
judgment creditor the reasonable cost of storage and takes



1 possession of the personal property not later than 15 days after the  
2 time the judgment creditor takes possession of the real property.

3 (4) The date the complaint was filed in the action ~~which~~ *that*  
4 resulted in the judgment of possession.

5 (5) The date or dates on which the court will hear objections to  
6 enforcement of a judgment of possession that are filed pursuant to  
7 Section 1174.3, unless a summons, complaint, and prejudgment  
8 claim of right to possession were served upon the occupants in  
9 accordance with Section 415.46.

10 (6) The daily rental value of the property as of the date the  
11 complaint for unlawful detainer was filed unless a summons,  
12 complaint, and prejudgment claim of right of possession were  
13 served upon the occupants in accordance with Section 415.46.

14 (7) If a summons, complaint, and prejudgment claim of right  
15 to possession were served upon the occupants in accordance with  
16 Section 415.46, a statement that the writ applies to all tenants,  
17 subtenants, if any, named claimants, if any, and any other  
18 occupants of the premises.

19 (c) At the time the writ of possession is served or posted, the  
20 levying officer shall also serve or post a copy of the form for a  
21 claim of right to possession, unless a summons, complaint, and  
22 prejudgment claim of right to possession were served upon the  
23 occupants in accordance with Section 415.46.

24 SEC. 44. Section 995.640 of the Code of Civil Procedure is  
25 amended to read:

26 995.640. The county clerk of any county shall, upon request  
27 of any person, do any of the following:

28 (a) Issue a certificate stating whether the certificate of authority  
29 of an admitted surety ~~issuer~~ *insurer* issued by the Insurance  
30 Commissioner authorizing the insurer to transact surety insurance,  
31 has been surrendered, revoked, canceled, annulled, or suspended,  
32 and in the event that it has, whether renewed authority has been  
33 granted. The county clerk in issuing the certificate shall rely solely  
34 upon the information furnished by the Insurance Commissioner  
35 pursuant to Article 2 (commencing with Section 12070) of  
36 Chapter 1 of Part 4 of Division 2 of the Insurance Code.

37 (b) Issue a certificate stating whether a copy of the transcript or  
38 record of the unrevoked appointment, power of attorney, bylaws,  
39 or other instrument, duly certified by the proper authority and  
40 attested by the seal of an admitted surety insurer entitling or

1 authorizing the person who executed a bond to do so for and in  
2 behalf of the insurer, is filed in the office of the clerk.

3 SEC. 45. Section 1021.8 of the Code of Civil Procedure is  
4 amended to read:

5 1021.8. (a) Whenever the Attorney General prevails in a civil  
6 action to enforce Section 22445, 22446.5, 22958, or 22962 of the  
7 Business and Professions Code, Section 52, 52.1, or 55 of the Civil  
8 Code, Section 1603.1, 2014, or 5650.1 of the Fish and Game Code,  
9 Section 4458, 12598, 12606, 12607, ~~12598~~, 12989.3, 66640,  
10 66641, or 66641.7 of the Government Code, Section 13009,  
11 13009.1, 19958.5, 25299, or 118950 of the Health and Safety  
12 Code, Section 308.1 or 308.3 of the Penal Code, Section 30820,  
13 30821.6, or 30822 of the Public Resources Code, or Section 275,  
14 1052, 1845, 13350, or 13385 of the Water Code, the court shall  
15 award to the Attorney General all costs of investigating and  
16 prosecuting the action, including expert fees, reasonable  
17 attorney's fees, and costs. Awards under this section shall be paid  
18 to the Public Rights Law Enforcement Special Fund established by  
19 Section 12530 of the Government Code.

20 (b) This section applies to any action pending on the effective  
21 date of this section and to any ~~actions~~ *action* filed thereafter.

22 SEC. 46. Section 1563 of the Code of Civil Procedure is  
23 amended to read:

24 1563. (a) Except as provided in subdivisions (b) and (c), all  
25 escheated property delivered to the Controller under this chapter  
26 shall be sold by the Controller to the highest bidder at public sale  
27 in whatever city in the state affords in his or her judgment the most  
28 favorable market for the property involved, or the Controller may  
29 conduct the sale by electronic media, including, but not limited to,  
30 the Internet, if in his or her judgment it is cost effective to conduct  
31 the sale of the property involved in that manner. The Controller  
32 may decline the highest bid and reoffer the property for sale if he  
33 or she considers the price bid insufficient. The Controller need not  
34 offer any property for sale if, in his or her opinion, the probable  
35 cost of sale exceeds the value of the property. Any sale of escheated  
36 property held under this section shall be preceded by a single  
37 publication of notice thereof, at least one week in advance of sale,  
38 in an English language newspaper of general circulation in the  
39 county where the property is to be sold.

1 (b) Securities listed on an established stock exchange within  
2 two years following receipt by the Controller shall be sold at the  
3 prevailing prices on that exchange. Other securities may be sold  
4 over the counter at prevailing prices or, with prior approval of the  
5 ~~State Board of Control~~ *California Victim Compensation and*  
6 *Government Claims Board*, by any other method that the  
7 Controller may determine to be advisable. United States  
8 government savings bonds and United States war bonds shall be  
9 presented to the United States for payment. Subdivision (a) does  
10 not apply to the property described in this subdivision.

11 (c) (1) All escheated property consisting of military awards,  
12 decorations, equipment, artifacts, memorabilia, documents,  
13 photographs, films, literature, and any other item relating to the  
14 military history of California and Californians that is delivered to  
15 the Controller is exempt from subdivision (a) and shall be held in  
16 trust for the Controller at the California State Military Museum  
17 and Resource Center. All escheated property held in trust pursuant  
18 to this subdivision is subject to the applicable regulations of the  
19 United States Army governing Army museum activities as  
20 described in Section 179 of the Military and Veterans Code. Any  
21 person claiming an interest in the escheated property may file a  
22 claim to the property pursuant to Article 4 (commencing with  
23 Section 1540).

24 (2) The California State Military Museum and Resource Center  
25 shall be responsible for the costs of storage and maintenance of  
26 escheated property delivered by the Controller under this  
27 subdivision.

28 (d) The purchaser at any sale conducted by the Controller  
29 pursuant to this chapter shall receive title to the property  
30 purchased, free from all claims of the owner or prior holder thereof  
31 and of all persons claiming through or under them. The Controller  
32 shall execute all documents necessary to complete the transfer of  
33 title.

34 SEC. 47. Section 1822.60 of the Code of Civil Procedure is  
35 amended to read:

36 1822.60. A warrant may be issued under the requirements of  
37 this title to authorize personnel of the Division of Gambling  
38 Control of the Department of Justice to conduct inspections as  
39 provided in subdivision (a) of Section ~~19825~~ 19827 of the  
40 Business and Professions Code.

1 SEC. 48. Section 2023 of the Code of Civil Procedure is  
2 amended to read:

3 2023. (a) Misuses of the discovery process include, but are  
4 not limited to, the following:

5 (1) Persisting, over objection and without substantial  
6 justification, in an attempt to obtain information or materials that  
7 are outside the scope of permissible discovery.

8 (2) Using a discovery method in a manner that does not comply  
9 with its specified procedures.

10 (3) Employing a discovery method in a manner or to an extent  
11 that causes unwarranted annoyance, embarrassment, or  
12 oppression, or undue burden and expense.

13 (4) Failing to respond or to submit to an authorized method of  
14 discovery.

15 (5) Making, without substantial justification, ~~an unmeritorious~~  
16 *a meritless* objection to discovery.

17 (6) Making an evasive response to discovery.

18 (7) Disobeying a court order to provide discovery.

19 (8) Making or opposing, unsuccessfully and without  
20 substantial justification, a motion to compel or to limit discovery.

21 (9) Failing to confer in person, by telephone, or by letter with  
22 an opposing party or attorney in a reasonable and good faith  
23 attempt to resolve informally any dispute concerning discovery, if  
24 the section governing a particular discovery motion requires the  
25 filing of a declaration stating facts showing that such an attempt  
26 has been made. Notwithstanding the outcome of the particular  
27 discovery motion, the court shall impose a monetary sanction  
28 ordering that any party or attorney who fails to confer as required  
29 pay the reasonable expenses, including attorney's fees, incurred by  
30 anyone as a result of that conduct.

31 (b) To the extent authorized by the section governing any  
32 particular discovery method or any other provision of this article,  
33 the court, after notice to any affected party, person, or attorney, and  
34 after opportunity for hearing, may impose the following sanctions  
35 against anyone engaging in conduct that is a misuse of the  
36 discovery process:

37 (1) The court may impose a monetary sanction ordering that  
38 one engaging in the misuse of the discovery process, or any  
39 attorney advising that conduct, or both, pay the reasonable  
40 expenses, including attorney's fees, incurred by anyone as a result

1 of that conduct. The court may also impose this sanction on one  
2 unsuccessfully asserting that another has engaged in the misuse of  
3 the discovery process, or on any attorney who advised that  
4 assertion, or on both. If a monetary sanction is authorized by any  
5 provision of this article, the court shall impose that sanction unless  
6 it finds that the one subject to the sanction acted with substantial  
7 justification or that other circumstances make the imposition of the  
8 sanction unjust.

9 (2) The court may impose an issue sanction ordering that  
10 designated facts shall be taken as established in the action in  
11 accordance with the claim of the party adversely affected by the  
12 misuse of the discovery process. The court may also impose an  
13 issue sanction by an order prohibiting any party engaging in the  
14 misuse of the discovery process from supporting or opposing  
15 designated claims or defenses.

16 (3) The court may impose an evidence sanction by an order  
17 prohibiting any party engaging in the misuse of the discovery  
18 process from introducing designated matters in evidence.

19 (4) The court may impose a terminating sanction by one of the  
20 following orders:

21 (A) An order striking out the pleadings or parts of the pleadings  
22 of any party engaging in the misuse of the discovery process.

23 (B) An order staying further proceedings by that party until an  
24 order for discovery is obeyed.

25 (C) An order dismissing the action, or any part of the action, of  
26 that party.

27 (D) An order rendering a judgment by default against that  
28 party.

29 (5) The court may impose a contempt sanction by an order  
30 treating the misuse of the discovery process as a contempt of court.

31 (c) A request for a sanction shall, in the notice of motion,  
32 identify every person, party, and attorney against whom the  
33 sanction is sought, and specify the type of sanction sought. The  
34 notice of motion shall be supported by a memorandum of points  
35 and authorities, and accompanied by a declaration setting forth  
36 facts supporting the amount of any monetary sanction sought.

37 SEC. 49. Section 2207 of the Corporations Code is amended  
38 to read:

2207. (a) A corporation is liable for a civil penalty in an amount not exceeding one million dollars (\$1,000,000) if the corporation does both of the following:

(1) Has actual knowledge that an officer, director, manager, or agent of the corporation does any of the following:

(A) Makes, publishes, or posts, or has made, published, or posted, either generally or privately to the shareholders or other persons, either of the following:

(i) An oral, written, or electronically transmitted report, exhibit, notice, or statement of its affairs or pecuniary condition that contains a material statement or omission that is false and intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(ii) An oral, written, or electronically transmitted report, prospectus, account, or statement of operations, values, business, profits, or expenditures, that includes a material false statement or omission intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(B) Refuses or has refused to make any book entry or post any notice required by law in the manner required by law.

(C) Misstates or conceals or has misstated or concealed from a regulatory body a material fact in order to deceive a regulatory body to avoid a statutory or regulatory duty, or to avoid a statutory or regulatory limit or prohibition.

(2) Within 30 days after the actual knowledge is acquired of the actions described in paragraph (1), the corporation knowingly fails to do both of the following:

(A) Notify the Attorney General or appropriate government agency in writing, unless the corporation has actual knowledge that the Attorney General or appropriate government agency has been notified.

(B) Notify its shareholders in writing, unless the corporation has actual knowledge that the shareholders have been notified.

(b) The requirement for notification under this section is not applicable if the action taken or about to be taken by the corporation, or by an officer, director, manager, or agent of the corporation under paragraph (1) of subdivision (a), is abated

1 within the time prescribed for reporting, unless the appropriate  
2 government agency requires disclosure by regulation.

3 (c) If the action reported to the Attorney General pursuant to  
4 this section implicates the government authority of an agency  
5 other than the Attorney General, the Attorney General shall  
6 promptly forward the written notice to that agency.

7 (d) If the Attorney General was not notified pursuant to  
8 subparagraph (A) of paragraph (2) of subdivision (a), but the  
9 corporation reasonably and in good faith believed that it had  
10 complied with the notification requirements of this section by  
11 notifying a government agency listed in paragraph ~~(4)~~ (5) of  
12 subdivision (e), no penalties shall apply.

13 (e) For purposes of this section:

14 (1) “Manager” means a person having both of the following:

15 (A) Management authority over a business entity.

16 (B) Significant responsibility for an aspect of a business that  
17 includes actual authority for the financial operations or financial  
18 transactions of the business.

19 (2) “Agent” means a person or entity authorized by the  
20 corporation to make representations to the public about the  
21 corporation’s financial condition and who is acting within the  
22 scope of the agency when the representations are made.

23 (3) “Shareholder” means a person or entity that is a  
24 shareholder of the corporation at the time the disclosure is required  
25 pursuant to subparagraph (B) of paragraph (2) of subdivision (a).

26 (4) “Notify its shareholders” means to give sufficient  
27 description of an action taken or about to be taken that would  
28 constitute acts or omissions as described in paragraph (1) of  
29 subdivision (a). A notice or report filed by a corporation with the  
30 United States Securities and Exchange Commission that relates to  
31 the facts and circumstances giving rise to an obligation under  
32 paragraph (1) of subdivision (a) shall satisfy all notice  
33 requirements arising under paragraph (2) of subdivision (a), but  
34 shall not be the exclusive means of satisfying the notice  
35 requirements, provided that the Attorney General or appropriate  
36 agency is informed in writing that the filing has been made  
37 together with a copy of the filing or an electronic link where it is  
38 available online without charge.



1 (5) “Appropriate government agency” means an agency on the  
2 following list that has regulatory authority with respect to the  
3 financial operations of a corporation:

4 (A) Department of Corporations.

5 (B) Department of Insurance.

6 (C) Department of Financial Institutions.

7 (D) Department of Managed Health Care.

8 (E) United States Securities and Exchange Commission.

9 (6) “Actual knowledge of the corporation” means the  
10 knowledge an officer or director of a corporation actually  
11 possesses or does not consciously avoid possessing, based on an  
12 evaluation of information provided pursuant to the corporation’s  
13 disclosure controls and procedures.

14 (7) “Refuse to make a book entry” means the intentional  
15 decision not to record an accounting transaction when all of the  
16 following conditions are satisfied:

17 (A) The independent auditors required recordation of an  
18 accounting transaction during the course of an audit.

19 (B) The audit committee of the corporation has not approved  
20 the independent auditor’s recommendation.

21 (C) The decision is made for the primary purpose of rendering  
22 the financial statements materially false or misleading.

23 (8) “Refuse to post any notice required by law” means an  
24 intentional decision not to post a notice required by law when all  
25 of the following conditions exist:

26 (A) The decision not to post the notice has not been approved  
27 by the corporation’s audit committee.

28 (B) The decision is intended to give the shares of stock in the  
29 corporation a materially greater or a materially less apparent  
30 market value than they really possess.

31 (9) “Misstate or conceal material facts from a regulatory  
32 body” means an intentional decision not to disclose material facts  
33 when all of the following conditions exist:

34 (A) The decision not to disclose material facts has not been  
35 approved by the corporation’s audit committee.

36 (B) The decision is intended to give the shares of stock in the  
37 corporation a materially greater or a materially less apparent  
38 market value than they really possess.

39 (10) “Material false statement or omission” means an untrue  
40 statement of material fact or an omission to state a material fact

1 necessary in order to make the statements made under the  
2 circumstances under which they were made not misleading.

3 (11) “Officer” means any person as set forth in Rule 16A-1  
4 promulgated under the Securities Exchange Act of 1934 or any  
5 successor regulation thereto, except an officer of a subsidiary  
6 corporation who is not also an officer of the parent corporation.

7 (f) This section only applies to corporations that are issuers, as  
8 defined in Section 2 of the Sarbanes-Oxley Act of 2002 (~~P.L.~~  
9 ~~107-204~~, 15 (15 U.S.C. Sec. 7201 and following)).

10 (g) An action to enforce this section may only be brought by the  
11 Attorney General or a district attorney or city attorney in the name  
12 of the people of the State of California.

13 SEC. 50. Section 13401.5 of the Corporations Code is  
14 amended to read:

15 13401.5. Notwithstanding subdivision (d) of Section 13401  
16 and any other provision of law, the following licensed persons may  
17 be shareholders, officers, directors, or professional employees of  
18 the professional corporations designated in this section so long as  
19 the sum of all shares owned by those licensed persons does not  
20 exceed 49 percent of the total number of shares of the professional  
21 corporation so designated herein, and so long as the number of  
22 those licensed persons owning shares in the professional  
23 corporation so designated herein does not exceed the number of  
24 persons licensed by the governmental agency regulating the  
25 designated professional corporation:

26 (a) Medical corporation.

27 (1) Licensed doctors of podiatric medicine.

28 (2) Licensed psychologists.

29 (3) Registered nurses.

30 (4) Licensed optometrists.

31 (5) Licensed marriage and family therapists.

32 (6) Licensed clinical social workers.

33 (7) Licensed physician assistants.

34 (8) Licensed chiropractors.

35 (9) Licensed acupuncturists.

36 (10) Naturopathic ~~Doctors~~ *doctors*.

37 (b) Podiatric medical corporation.

38 (1) Licensed physicians and surgeons.

39 (2) Licensed psychologists.

40 (3) Registered nurses.

- 1 (4) Licensed optometrists.
- 2 (5) Licensed chiropractors.
- 3 (6) Licensed acupuncturists.
- 4 (7) Naturopathic doctors.
- 5 (c) Psychological corporation.
- 6 (1) Licensed physicians and surgeons.
- 7 (2) Licensed doctors of podiatric medicine.
- 8 (3) Registered nurses.
- 9 (4) Licensed optometrists.
- 10 (5) Licensed marriage and family therapists.
- 11 (6) Licensed clinical social workers.
- 12 (7) Licensed chiropractors.
- 13 (8) Licensed acupuncturists.
- 14 (9) Naturopathic ~~Doctors~~ *doctors*.
- 15 (d) Speech-language pathology corporation.
- 16 (1) Licensed audiologists.
- 17 (e) Audiology corporation.
- 18 (1) Licensed speech-language pathologists.
- 19 (f) Nursing corporation.
- 20 (1) Licensed physicians and surgeons.
- 21 (2) Licensed doctors of podiatric medicine.
- 22 (3) Licensed psychologists.
- 23 (4) Licensed optometrists.
- 24 (5) Licensed marriage and family therapists.
- 25 (6) Licensed clinical social workers.
- 26 (7) Licensed physician assistants.
- 27 (8) Licensed chiropractors.
- 28 (9) Licensed acupuncturists.
- 29 (10) Naturopathic doctors.
- 30 (g) Marriage and family therapy corporation.
- 31 (1) Licensed physicians and surgeons.
- 32 (2) Licensed psychologists.
- 33 (3) Licensed clinical social workers.
- 34 (4) Registered nurses.
- 35 (5) Licensed chiropractors.
- 36 (6) Licensed acupuncturists.
- 37 (7) Naturopathic doctors.
- 38 (h) Licensed clinical social worker corporation.
- 39 (1) Licensed physicians and surgeons.
- 40 (2) Licensed psychologists.



- 1 (3) Licensed marriage and family therapists.
- 2 (4) Registered nurses.
- 3 (5) Licensed chiropractors.
- 4 (6) Licensed acupuncturists.
- 5 (7) Naturopathic doctors.
- 6 (i) Physician assistants corporation.
- 7 (1) Licensed physicians and surgeons.
- 8 (2) Registered nurses.
- 9 (3) Licensed acupuncturists.
- 10 (4) Naturopathic doctors.
- 11 (j) Optometric corporation.
- 12 (1) Licensed physicians and surgeons.
- 13 (2) Licensed doctors of podiatric medicine.
- 14 (3) Licensed psychologists.
- 15 (4) Registered nurses.
- 16 (5) Licensed chiropractors.
- 17 (6) Licensed acupuncturists.
- 18 (7) Naturopathic doctors.
- 19 (k) Chiropractic corporation.
- 20 (1) Licensed physicians and surgeons.
- 21 (2) Licensed doctors of podiatric medicine.
- 22 (3) Licensed psychologists.
- 23 (4) Registered nurses.
- 24 (5) Licensed optometrists.
- 25 (6) Licensed marriage and family therapists.
- 26 (7) Licensed clinical social workers.
- 27 (8) Licensed acupuncturists.
- 28 (9) Naturopathic doctors.
- 29 (l) Acupuncture corporation.
- 30 (1) Licensed physicians and surgeons.
- 31 (2) Licensed doctors of podiatric medicine.
- 32 (3) Licensed psychologists.
- 33 (4) Registered nurses.
- 34 (5) Licensed optometrists.
- 35 (6) Licensed marriage and family therapists.
- 36 (7) Licensed clinical social workers.
- 37 (8) Licensed physician assistants.
- 38 (9) Licensed chiropractors.
- 39 (10) Naturopathic doctors.
- 40 (m) Naturopathic doctor corporation.



- 1 (1) Licensed physicians and surgeons.
- 2 (2) Licensed psychologists.
- 3 (3) Registered nurses.
- 4 (4) Licensed physician assistants.
- 5 (5) Licensed chiropractors.
- 6 (6) Licensed acupuncturists.
- 7 (7) Licensed physical therapists.
- 8 (8) Licensed doctors of podiatric medicine.
- 9 (9) Licensed marriage, family, and child counselors.
- 10 (10) Licensed clinical social workers.
- 11 (11) Licensed optometrists.
- 12 (n) Dental corporation.
- 13 (1) Licensed ~~physician~~ *physicians* and surgeons.
- 14 (2) Dental assistants.
- 15 (3) Registered dental assistants.
- 16 (4) Registered dental assistants in extended functions.
- 17 (5) Registered dental hygienists.
- 18 (6) Registered dental hygienists in extended functions.
- 19 (7) Registered dental hygienists in alternative practice.

20 SEC. 51. Section 14010 of the Corporations Code is amended  
21 to read:

22 14010. Unless the context otherwise requires, the definitions  
23 in this section govern the construction of this part.

24 (a) “Corporation” or “the corporation” means any nonprofit  
25 California small business financial development corporation  
26 created pursuant to this part.

27 (b) “Financial institution” means banking organizations  
28 including national banks and trust companies authorized to  
29 conduct business in California and state-chartered commercial  
30 banks, trust companies, and savings and loan associations.

31 (c) “Financial company” means banking organizations  
32 including national banks and trust companies, savings and loan  
33 associations, state insurance companies, mutual insurance  
34 companies, and other banking, lending, retirement, and insurance  
35 organizations.

36 (d) “Expansion Fund” means the California Small Business  
37 Expansion Fund.

38 (e) Unless otherwise defined by the office by regulation,  
39 “small business loan” means a loan to a business defined as an  
40 eligible small business as set forth in Section 121.3-10 of Part 121

1 of Chapter 1 of Title 13 of the Code of Federal Regulations,  
2 including those businesses organized for agricultural purposes that  
3 create or retain employment as a result of the loan. From time to  
4 time, the director shall provide guidelines as to the preferred ratio  
5 of jobs created or retained to total funds borrowed for guidance to  
6 the corporations.

7 (f) “Employment incentive loan” means a loan to a qualified  
8 business, as defined in subdivision (h) of Section 7082 of the  
9 Government Code, or to a business located within an enterprise  
10 zone, as defined in subdivision (b) of Section 7072 of the  
11 Government Code.

12 (g) “Loan committee” means a committee appointed by the  
13 board of directors of a corporation to determine the course of  
14 action on a loan application pursuant to Section 14060.

15 (h) “Board of directors” means the board of directors of the  
16 corporation.

17 (i) “Office” means the California Office of Small Business  
18 Development.

19 (j) “Board” means the California Small Business Board.

20 (k) “Agency” means the ~~Trade Business, Transportation and~~  
21 ~~Commerce Housing Agency.~~

22 (l) “Director” means the Executive Director of the California  
23 Office of Small Business.

24 (m) “Secretary” means the Secretary of ~~Trade Business,~~  
25 ~~Transportation and Commerce Housing.~~

26 (n) “Trust fund” means the money from the expansion fund  
27 that is held in trust by a financial institution or a financial company.  
28 A trust fund is not a deposit of state funds and is not subject to the  
29 requirements of Section 16506 of the Government Code.

30 (o) “Trust fund account” means an account within the trust  
31 fund that is allocated to a particular small business financial  
32 development corporation for the purpose of paying loan defaults  
33 and claims on bond guarantees for a specific small business  
34 financial development corporation.

35 (p) “Trustee” is the lending institution or financial company  
36 selected by the office to hold and invest the trust fund. The  
37 agreement between the agency and the trustee shall not be  
38 construed to be a deposit of state funds.

SEC. 52. Section 17655 of the Corporations Code, as added by Section 3 of Chapter 477 of the Statutes of 2003, is amended and renumbered to read:

~~17655.~~

17656. (a) A limited liability company is liable for a civil penalty in an amount not exceeding one million dollars (\$1,000,000) if the limited liability company does both of the following:

(1) Has actual knowledge that a member, officer, manager, or agent of the limited liability company does any of the following:

(A) Makes, publishes, or posts, or has made, published, or posted, either generally or privately to the shareholders or other persons, either of the following:

(i) An oral, written, or electronically transmitted report, exhibit, notice, or statement of its affairs or pecuniary condition that contains a material statement or omission that is false and intended to give membership shares in the limited liability company a materially greater or a materially less apparent market value than they really possess.

(ii) An oral, written, or electronically transmitted report, prospectus, account, or statement of operations, values, business, profits, or expenditures that includes a material false statement or omission intended to give membership shares in the limited liability company a materially greater or a materially less apparent market value than they really possess.

(B) Refuses or has refused to make any book entry or post any notice required by law in the manner required by law.

(C) Misstates or conceals or has misstated or concealed from a regulatory body a material fact in order to deceive a regulatory body to avoid a statutory or regulatory duty, or to avoid a statutory or regulatory limit or prohibition.

(2) Within 30 days after the actual knowledge is acquired of the actions described in paragraph (1), the limited liability company knowingly fails to do both of the following:

(A) Notify the Attorney General or appropriate government agency in writing, unless the limited liability company has actual knowledge that the Attorney General or appropriate government agency has been notified.



1 (B) Notify its members and investors in writing, unless the  
2 limited liability company has actual knowledge that the members  
3 and investors have been notified.

4 (b) The requirement for notification under this section is not  
5 applicable if the action taken or about to be taken by the limited  
6 liability company, or by a member, officer, manager, or agent of  
7 the limited liability company under paragraph (1) of subdivision  
8 (a), is abated within the time prescribed for reporting, unless the  
9 appropriate government agency requires disclosure by regulation.

10 (c) If the action reported to the Attorney General pursuant to  
11 this section implicates the government authority of an agency  
12 other than the Attorney General, the Attorney General shall  
13 promptly forward the written notice to that agency.

14 (d) If the Attorney General was not notified pursuant to  
15 subparagraph (A) of paragraph (2) of subdivision (a), but the  
16 limited liability company reasonably and in good faith believed  
17 that it had complied with the notification requirements of this  
18 section by notifying a government agency listed in paragraph (4)  
19 (5) of subdivision (e), no penalties shall apply.

20 (e) For purposes of this section:

21 (1) “Manager” means a person defined by subdivision (w) of  
22 Section 17001 having both of the following:

23 (A) Management authority over the limited liability company.

24 (B) Significant responsibility for an aspect of the limited  
25 liability company that includes actual authority for the financial  
26 operations or financial transactions of the limited liability  
27 company.

28 (2) “Agent” means a person or entity authorized by the limited  
29 liability company to make representations to the public about the  
30 limited liability company’s financial condition and who is acting  
31 within the scope of the agency when the representations are made.

32 (3) “Member” means a person as defined by subdivision (x) of  
33 Section 17001 that is a member of the limited liability company  
34 at the time the disclosure is required pursuant to subparagraph (B)  
35 of paragraph (2) of subdivision (a).

36 (4) “Notify its members” means to give sufficient description  
37 of an action taken or about to be taken that would constitute acts  
38 or omissions as described in paragraph (1) of subdivision (a). A  
39 notice or report filed by a limited liability company with the  
40 United States Securities and Exchange Commission that relates to

1 the facts and circumstances giving rise to an obligation under  
2 paragraph (1) of subdivision (a) shall satisfy all notice  
3 requirements arising under paragraph (2) of subdivision (a) but  
4 shall not be the exclusive means of satisfying the notice  
5 requirements, provided that the Attorney General or appropriate  
6 agency is informed in writing that the filing has been made  
7 together with a copy of the filing or an electronic link where it is  
8 available online without charge.

9 (5) “Appropriate government agency” means an agency on the  
10 following list that has regulatory authority with respect to the  
11 financial operations of a limited liability company:

12 (A) Department of Corporations.

13 (B) Department of Insurance.

14 (C) Department of Financial Institutions.

15 (D) Department of Managed Health Care.

16 (E) United States Securities and Exchange Commission.

17 (6) “Actual knowledge of the limited liability company”  
18 means the knowledge a member, officer, or manager of a limited  
19 liability company actually possesses or does not consciously avoid  
20 possessing, based on an evaluation of information provided  
21 pursuant to the limited liability company’s disclosure controls and  
22 procedures.

23 (7) “Refuse to make a book entry” means the intentional  
24 decision not to record an accounting transaction ~~and~~ *when* all of the  
25 following conditions are satisfied:

26 (A) The independent auditors required recordation of an  
27 accounting transaction during the course of an audit.

28 (B) The audit committee of the limited liability company has  
29 not approved the independent auditor’s recommendation.

30 (C) The decision is made for the primary purpose of rendering  
31 the financial statements materially false or misleading.

32 (8) “Refuse to post any notice required by law” means an  
33 intentional decision not to post a notice required by law when all  
34 of the following conditions exist:

35 (A) The decision not to post the notice has not been approved  
36 by the limited liability company’s audit committee.

37 (B) The decision is intended to give the membership shares in  
38 the limited liability company a materially greater or a materially  
39 less apparent market value than they really possess.

(9) “Misstate or conceal material facts from a regulatory body” means an intentional decision not to disclose material facts when all of the following conditions exist:

(A) The decision not to disclose material facts has not been approved by the limited liability company’s audit committee.

(B) The decision is intended to give the membership shares in the limited liability company a greater or a less apparent market value than they really possess.

(10) “Material false statement or omission” means an untrue statement of material fact or an omission to state a material fact necessary in order to make the statements made under the circumstances under which they were made not misleading.

(11) “Officer” means a person appointed pursuant to Section 17154, except an officer of a specified subsidiary limited liability company who is not also an officer of the parent limited liability company.

(f) This section only applies to limited liability companies that are issuers, as defined in Section 2 of the Sarbanes-Oxley Act of 2002 (~~P.L. 107-204; 15~~ 15 U.S.C. Sec. 7201 and following).

(g) An action to enforce this section may only be brought by the Attorney General or a district attorney or city attorney in the name of the people of the State of California.

SEC. 53. Section 8266.1 of the Education Code is amended to read:

8266.1. ~~(a)~~ Commencing with the 1995–96 fiscal year and each fiscal year thereafter, for the purposes of this chapter, reimbursement rates shall be adjusted by the following reimbursement factors for child care and development programs with a standard reimbursement rate, but shall not apply to the Resource and Referral Programs set forth in Article 2 (commencing with Section 8210), the Alternative Payment Programs set forth in Article 3 (commencing with Section 8220), the State Preschool Programs set forth in Article 7 (commencing with Section 8235), the School-age Community Child Care Services programs set forth in Article 22 (commencing with Section 8460), or to the school-age parent and infant development programs:

(a) For child care and development program providers serving children for less than four hours per day, the reimbursement factor is 55 percent of the standard reimbursement rate.

(b) For child care and development program providers serving children for not less than four hours per day, and less than six and one-half hours per day, the reimbursement factor is 75 percent of the standard reimbursement rate. For providers operating under the At Risk Child Care Program set forth in Article 15.5 (commencing with Section 8350) and serving children for not less than four hours per day, and less than seven hours per day, the reimbursement factor is 75 percent of the standard reimbursement rate.

(c) For child care and development program providers serving children for not less than six and one-half hours per day, and less than ~~ten~~ 10 and one-half hours per day, the reimbursement factor is 100 percent of the standard reimbursement rate. For providers operating under the At Risk Child Care Program set forth in Article 15.5 (commencing with Section 8350) and serving children for not less than seven hours per day, and less than ~~ten~~ 10 hours per day, the reimbursement factor is 100 percent of the standard reimbursement rate.

(d) For child care and development program providers serving children for ~~ten~~ 10 and one-half hours or more per day, the reimbursement factor is 118 percent of the standard reimbursement rate.

SEC. 54. Section 8813 of the Education Code is amended to read:

8813. (a) Each eligible local arts agency may apply for a grant of up to one hundred thousand dollars (\$100,000) per year for the development, implementation, and review of an arts education program. Each grant application shall be preceded by a letter of intent to file that application submitted by the local arts agency on or before the January 1 immediately preceding the fiscal year for which grant funding is requested. Each eligible local arts agency shall include in its letter of intent an authorization to make application to this program from the county board of supervisors if the agency is a county agency or designated by the county board of supervisors, or from the city council if the agency is an agency of the city or is designated by the city. If the local arts agency is neither designated by, nor a department of, either city or county government, it shall include authorization by its board of trustees authorizing the agency to make application under this program.

1 (b) Each grant application shall include, but not be limited to,  
2 all of the following:

3 (1) A plan for the proposed arts education program that meets  
4 all of the following criteria:

5 (A) The plan has been approved by resolution of the governing  
6 board of each participating school district or by the county board  
7 of education.

8 (B) The plan includes an assessment of the needs of public  
9 schools included in the partnership located within the jurisdiction  
10 of the local arts agency that is consistent with the guidelines for  
11 those assessments developed by the ~~State Department of~~  
12 ~~Education~~ *department* in consultation with the California Arts  
13 Council. The plan shall evidence appropriate participation by local  
14 citizens who are representative of the ethnic and cultural  
15 composition of the county.

16 (C) The plan shall describe a comprehensive arts education  
17 program that conforms to the tenets of the state's adopted  
18 curriculum framework for visual and performing arts as published  
19 by the ~~State Department of Education~~ *department* in Visual and  
20 Performing Arts Framework for California Public Schools:  
21 Kindergarten through Grade 12, and shall include instruction in  
22 the four disciplines of dance, drama and theatre, music, and the  
23 visual arts for all pupils. The plan may also include other arts  
24 disciplines, including folk arts, film, video, and the writing of  
25 plays, scripts, and poetry.

26 (D) The plan proposes the use of community arts resources,  
27 including, but not limited to, professional artists, arts specialists,  
28 performing artists and companies, museums, nonprofit art  
29 galleries, institutions of higher education, resident artists  
30 organizations, and any program of the local arts agency or general  
31 community resources that provide arts education services,  
32 instruction, workshops, performances, or demonstrations.

33 (E) The plan provides for a local steering committee comprised  
34 of not less than 10, nor more than 13, members selected from  
35 professional artists, arts educators, administrators, teachers, arts  
36 organizations, school board members, and other citizens, to  
37 include the following members reflecting a balance between the  
38 education and the arts communities:

39 (i) One representative of the local arts agency.

40 (ii) Two professional artists.



1 (iii) One representative of a local educational agency.

2 (iv) Two teachers, including one from the local educational  
3 agency.

4 (v) Two arts specialists.

5 (vi) One community representative at large.

6 (vii) One representative of an institution of higher education,  
7 who shall be either a faculty member in the visual and performing  
8 arts or arts education or have had prior experience in these two  
9 areas.

10 (F) The plan describes school needs, program goals, and a  
11 process for screening community arts resources. The fiscal  
12 procedures and pay rates shall be in accordance with standards  
13 established by the California Arts Council. Any of the community  
14 arts resources described in subparagraph (D) ~~is~~ *are* eligible for a  
15 program grant if ~~it demonstrates~~ *they demonstrate* high-quality  
16 arts performance, production, or instruction.

17 (G) The plan shall include an appropriate orientation for artists  
18 and teachers in participating schools.

19 (H) The plan shall include a staff development program which  
20 accounts for at least 10 percent of the overall budget for the plan,  
21 but not more than 20 percent of the overall budget for all public  
22 school teachers participating in the program ~~pursuant to Article 1~~  
23 ~~(commencing with Section 44670.1) and Article 2 (commencing~~  
24 ~~with Section 44680) of Chapter 3.1 of Part 25 and under the~~  
25 California Arts Project, as established pursuant to Chapter 5  
26 (commencing with Section 99200) of Part 65. For the purposes of  
27 this paragraph, a teacher is participating in the program if he or she  
28 instructs a class that will have more than 10 hours of direct contact  
29 with a community arts representative.

30 (I) The plan shall include a description of the manner in which  
31 funding for the staff development programs described in  
32 subparagraph (H) shall be used in providing services to teachers.  
33 The local educational agency shall use the services of the  
34 California Arts Project established pursuant to Chapter 5  
35 (commencing with Section 99200) of Part 65 and shall consult  
36 with at least one of the following entities in developing the staff  
37 development plans: a county office of education, an arts agency,  
38 an arts provider, a professional arts association, or an institution of  
39 higher education.

1 (J) The plan shall assess the arts education of homeless  
2 children, children with special needs, children at risk, school  
3 dropouts, and the children of migrant workers who may not be  
4 attending class regularly. It is the intent of the Legislature that  
5 special supplementary funds, not to exceed 10 percent of the total  
6 state dollars, shall be appropriated for purposes of this  
7 subparagraph. Arts education delivered pursuant to this paragraph  
8 is exempt from the local matching funds requirement described in  
9 Section 8814.

10 (2) A proposed budget for expenditure of the grant, which shall  
11 be submitted on a form developed by the California Arts Council  
12 for that purpose.

13 (3) A section demonstrating the manner in which the proposal  
14 furthers the implementation of the model curriculum standards set  
15 forth in Section 51226, the Visual and Performing Arts  
16 Framework for California Public Schools: Kindergarten through  
17 Grade Twelve published by the ~~State Department of Education~~  
18 *department*, or the implementation or operation of specialized  
19 secondary programs pursuant to Chapter 6 (commencing with  
20 Section 58800) of Part 31.

21 (4) A section designating the source of all local matching  
22 funds, as described in Section 8814.

23 SEC. 55. Section 8825 of the Education Code is amended to  
24 read:

25 8825. An eligible applicant may submit a project proposal  
26 that addresses one or more of the following areas:

27 (a) Arts education programs that are aligned to the state  
28 adopted visual and performing arts content standards and  
29 framework.

30 (b) Pupil assessment in the arts.

31 (c) Participation in local and state networks to create  
32 comprehensive standards based arts education programs.

33 (d) Expanding the capacity to assist pupils in achieving the  
34 state adopted visual and performing arts content standards.

35 (e) Developing an online statewide digital visual and  
36 performing arts resource center.

37 (f) Expanding arts education programs developed through  
38 participation in the Local Arts Education Partnership Program as  
39 set forth in ~~Article 2 (commencing with Section 8757.10) of~~





~~Chapter 9 of Division 1 of Title 2 of the Government Code Chapter 5 (commencing with Section 8810).~~

SEC. 56. Section 17077.45 of the Education Code is amended to read:

17077.45. (a) The board shall establish standards for determining the amount of the supplemental grant funding to be made available for each project under this article.

(1) For a project application qualifying for funding under paragraph (1) of subdivision (b) of Section 17077.40, the supplemental grant shall be in the form of an adjustment to the per-pupil eligibility of the project. This per-pupil eligibility adjustment shall be calculated to cover costs associated with the project that are uniquely related to the joint-use nature of the project, including, but not limited to, any increased costs associated with planning the joint-use aspect of the project.

(2) For a project application qualifying under paragraph (2) or (3) of subdivision (b) of Section 17077.40, the supplemental grant may be provided without regard to the existence of per-pupil eligibility pursuant to this chapter, and may be expressed on a per-square-foot cost basis, on a per-pupil cost basis, or on a per-project cost basis.

(b) Notwithstanding any other provision of this chapter, project costs may exceed the board's standards established pursuant to subdivision (a) only if the excess is paid completely by local or joint-use partner sources.

(c) On July 1 of each year the board shall apportion to qualifying applicant school districts those funds that it determines are available for the purpose of this article. The board shall not release funds to a qualifying applicant until the project plans have received all approval required pursuant to this chapter, including, but not limited to, the approval of the Division of the State Architect. If the project does not receive all necessary plan approvals within one year of the date of the apportionment, the board shall rescind the apportionment.

(d) If the total funding for the purposes of this article is not sufficient to fund all of the joint-use projects for funding under this article, the board shall first fund projects eligible under paragraphs (1), (2), and (3) of subdivision (b) of Section 17077.40 in that order. The board may establish other priority standards within that order, as necessary.

(e) Except as expressly provided in this article, projects funded pursuant to this article shall comply with all other requirements of this chapter, except for Article 11 (commencing with Section 17078.10), which shall apply only to projects under this article if they also qualify for funding under Article 11 (commencing with Section 17078.10).

SEC. 57. Section 17334 of the Education Code is amended to read:

17334. During the construction of a private school structure, the enforcement agency shall require the engineer of record responsible for the structural design, or that engineer's authorized representative, to make periodic reviews of construction at the construction site to observe compliance with the approved structural plans, specifications, and change orders. The engineer of record in general responsible charge of the work of construction, and the registered professional engineer, shall make a report, duly verified by him or her through periodic review of construction, showing that the work done during the period covered by the report has been performed and that the materials used and installed are in accordance with the approved drawings and specifications. Any detailed statements of fact required by the enforcement agency shall be included. These observations and statements shall not be relied upon by others as acceptance of the work, nor shall they be construed to relieve the contractor in any way of his or her obligations and responsibilities under the construction contract.

"Periodic review of construction," as used in this section and as applied to the architect, civil engineer, structural engineer, or the registered professional engineer, means the knowledge that is obtained from periodic visits of reasonable frequency to the project site for the purpose of general observation of the work. It also means the knowledge that is obtained from the reporting of others as to the progress of the work, testing of materials, inspection, and superintendence of the work that is performed between those periodic visits of the architect, civil engineer, or structural engineer, or the registered engineer. The exercise of reasonable diligence to obtain the facts is required. "Periodic review of construction" does not include—~~responsibility~~ *responsibility* for superintendence of construction processes, site



1 conditions, operations, equipment, personnel, or maintenance of  
2 a safe place to work or any safety in, on, or about the site of work.

3 SEC. 58. Section 17360 of the Education Code is amended to  
4 read:

5 17360. Sections 17297, 17302, 17307, 17309, and 17311  
6 shall not apply with respect to the design and construction of onsite  
7 work except where required *by* Section 17358.

8 SEC. 59. Section 22852 of the Education Code is amended to  
9 read:

10 22852. (a) An employer reemploying a member of the  
11 Defined Benefit Program with service subject to the requirements  
12 of Chapter 43 (commencing with Section 4301) of Title 38 of the  
13 United States Code shall be liable to the plan for the employer  
14 contributions under this part, provided that employer was the last  
15 employer employing the member immediately prior to the period  
16 served by the member in the uniformed services.

17 (b) For purposes of determining the amount of that liability  
18 under this part and any obligation to the plan with respect to the  
19 Defined Benefit Program, interest shall not be included in the  
20 liability to the plan.

21 (c) Subject to subdivision (e), the employer shall pay the  
22 employer contributions for the eligible period of service in the  
23 uniformed services; that would have been required under Sections  
24 22950 and 22951 had the member remained continuously  
25 employed during that period of eligible service in the uniformed  
26 services.

27 (d) The employer shall not be liable for employer contributions  
28 under this part for the eligible period of service in the uniformed  
29 services to the extent that the member fails to remit the member  
30 contributions for ~~such~~ *that* period.

31 (e) The employer shall provide information regarding the  
32 reemployment of a member who is subject to Chapter 43  
33 (commencing with Section 4301) of Title 38 of the United ~~State~~  
34 ~~Codes~~ *States Code* on a form prescribed by the system within 30  
35 days of the date of reemployment.

36 (f) Employers shall remit to the plan with respect to the Defined  
37 Benefit Program the employer contributions required under  
38 subdivision (c) within 60 working days of the date the system  
39 notifies the employer of the amount of contributions due with  
40 respect to the member who elects to remit the member

1 contributions for the eligible period of service in the uniformed  
2 services.

3 (g) If the employee does not comply with subdivision (b) of  
4 Section 22851 within the time period specified, the employer  
5 contributions that were remitted for that period shall be adjusted  
6 pursuant to Section 23008.

7 SEC. 60. Section 22854 of the Education Code is amended to  
8 read:

9 22854. A reemployed member who has been absent from a  
10 position of employment subject to coverage under the Defined  
11 Benefit Program to perform service in the uniformed services,  
12 pursuant to Section 22850, for a period in excess of five years shall  
13 not be entitled to service credit or credit for plan vesting purposes  
14 under this part, except where the service in the uniformed services  
15 has exceeded five years for the following reasons:

16 (a) The member is required to serve beyond five years to  
17 complete an initial period of obligated service.

18 (b) The member was unable to obtain orders releasing the  
19 member from a period of service in the uniformed services before  
20 the expiration of the five-year period and that inability was  
21 through no fault of the member.

22 (c) The member served in the uniformed services as required  
23 pursuant to Section 270 of Title 10 of the United States Code,  
24 Section 502(a) or 503 of Title 32 of the United States Code, or to  
25 fulfill additional training requirements determined and certified in  
26 writing by the Secretary of Defense, to be necessary for  
27 professional development, or for completion of skill training or  
28 retraining.

29 (d) The member is ordered to do any of the following:

30 (1) Ordered to or retained on active duty under Section 672(a),  
31 672(g), 673, 673(b), 673(c), or 688 of Title 10 of the United States  
32 Code or under Section 331, 332, 359, 360, 367, or 712 of Title 14  
33 of the United States Code.

34 (2) Ordered to or retained on active duty, other than for  
35 training, under any provision of law during a war or during a  
36 national emergency declared by the President or the Congress.

37 (3) Ordered to active duty, other than for training, in support,  
38 as determined by the secretary concerned, of an operational  
39 mission for which personnel have been ordered to active duty  
40 under Section 673(b) of Title 10 of the United States Code.



(4) Ordered to active duty in support, as determined by the secretary concerned, of a critical mission or requirement of the uniformed services.

(5) Called into federal service as a member of the National Guard under Chapter 15 (commencing with Section 331) of Title 10 of the United States Code or under Section 3500 or 8500 of Title 10 of the United States Code.

SEC. 61. Section 27403 of the Education Code is amended to read:

27403. The nonparticipant spouse who is awarded separate nominal accounts pursuant to Section ~~24702~~ 27402 is not a participant of the Cash Balance Benefit Program. The nonparticipant spouse is entitled only to rights and benefits explicitly established by this chapter.

SEC. 62. Section 32265 of the Education Code is amended to read:

32265. (a) The partnership shall sponsor a at least two regional conferences for school districts, county offices of education, youth serving agencies, allied agencies, community-based organizations, and law enforcement agencies to identify exemplary programs and techniques that have been effectively utilized to reduce school crime, including hate crimes, vandalism, drug and alcohol abuse, gang membership and gang violence, truancy, and excessive absenteeism.

(b) The conference may include, but need not be limited to, information on all of the following topics:

(1) Interagency collaboration between schools, youth serving agencies, law enforcement agencies, and others.

(2) School attendance.

(3) School safety.

(4) Citizenship education.

(5) Drug and alcohol abuse.

(6) Child abuse prevention, detection, and reporting.

(7) Parental education.

(8) Crisis response training.

(9) Bullying prevention.

(10) Threat assessment.

(11) Conflict resolution and youth mediation.

(12) Teen relationship violence.

(13) Discrimination and harassment reporting and prevention, including, but not limited to, sexual harassment reporting and prevention.

(14) Hate crime reporting and prevention.

(15) Reporting and prevention of abuse against pupils with disabilities.

SEC. 63. Section 42238.41 of the Education Code is amended to read:

42238.41. (a) For the 1996–97 fiscal year, the county superintendent of schools, in conjunction with the Superintendent of Public Instruction, shall compute an equalization adjustment for each school district in the county, so that no district’s 1995–96 base revenue limit per unit of average daily attendance is less than the 1995–96 fiscal year statewide average base revenue limit for the appropriate size and type of district listed in subdivision (b).

For purposes of this section, the district base revenue limit and the statewide average base revenue limit shall not include any amounts attributable to Section 45023.4, 46200, or 46201.

(b) Subdivision (a) shall apply to the following school districts, which shall be grouped according to size and type as follows:

District	ADA
Elementary .....	less than 101
Elementary .....	more than 100
High School .....	less than 301
High School .....	more than 300
Unified .....	less than 1,501
Unified .....	more than 1,500

(c) The Superintendent of Public Instruction shall compute a revenue limit equalization adjustment for each school district’s base revenue limit per unit of average daily attendance as follows:

(1) Add the products of the amount computed for each school district by the county superintendent pursuant to subdivision (a) and the average daily attendance used to calculate the district’s revenue limit for the current fiscal year as adjusted for the deficit factor in Section 42238.145.

(2) Divide the amount appropriated for purposes of this section for the current fiscal year by the amount computed pursuant to paragraph (1).

(3) Multiply the amount computed for the school district pursuant to subdivision (a) by the amount computed pursuant to paragraph (2).

(d) For the purposes of this section, the 1995–96 statewide average base revenue limits determined for the purposes of subdivision (a) and the fraction computed pursuant to paragraph (2) of subdivision (c) by the Superintendent of Public Instruction for the 1995–96 second principal apportionment shall be final, and shall not be recalculated at subsequent apportionments. In no event shall the fraction computed pursuant to paragraph (2) of subdivision (c) exceed 1.00. For the purposes of determining the size of a district used in subdivision (b), county superintendents of schools, in conjunction with the Superintendent of Public Instruction, shall use a school district’s revenue limit average daily attendance for the 1995–96 fiscal year as determined pursuant to Section 42238.5 and Article 4 (commencing with Section 42280).

SEC. 64. Section 44279.2 of the Education Code is amended to read:

44279.2. (a) The superintendent and the commission shall jointly administer the Beginning Teacher Support and Assessment System pursuant to this chapter. In administering this section, the superintendent and the commission shall provide or contract for the provision of all of the following:

(1) ~~Establishment of~~ *Establishing* requirements for reviewing and approving teacher induction programs.

(2) ~~Development and administration of~~ *Developing and administering* a system for ensuring teacher induction program quality and effectiveness. For the purposes of this section, “program effectiveness” means producing excellent program outcomes in relation to the purposes defined in subdivision (b) of Section 44279.1. For the purposes of this section, “program quality” means excellence with respect to program factors, including, but not limited to, all of the following:

(A) Program goals.

(B) Design resources.

(C) Management, evaluation, and improvement of the program.

(D) School context and working conditions.

(E) Support and assessment services to each beginning teacher.



1 (3) Developing purposes and functions for reviewing and  
2 approving supplemental grants and standards for program clusters  
3 and program consultants, as defined pursuant to Section 44279.7.

4 (4) Improving and refining the formative assessment system.

5 (5) Improving and refining professional development  
6 materials and strategies for all personnel involved in  
7 implementing induction programs.

8 (6) Conducting and tracking research related to beginning  
9 teacher induction.

10 (7) Periodically evaluating the validity of the California  
11 Standards for the Teaching Profession adopted by the commission  
12 in January 1997 and the Standards of Quality and Effectiveness for  
13 Beginning Teacher Support and Assessment Program adopted by  
14 the commission in 1997 and making changes to those documents,  
15 as necessary.

16 (b) As part of the Beginning Teacher Support and Assessment  
17 System, the commission and the superintendent shall establish  
18 requirements for local teacher induction programs.

19 (c) A school district or consortium of school districts may  
20 apply to the superintendent for funding to establish a local teacher  
21 induction program pursuant to this section. From amounts  
22 appropriated for the purposes of this section, the superintendent  
23 shall allocate three thousand dollars (\$3,000) for each beginning  
24 teacher participating in the program. That amount shall be adjusted  
25 each fiscal year by the inflation factor set forth in Section 42238.1.  
26 To be eligible to receive funding, a school district or consortium  
27 of school districts shall, at a minimum, meet all of the following  
28 requirements:

29 (1) Develop, implement, and evaluate teacher induction  
30 programs that meet the Quality and Effectiveness for Beginning  
31 Teacher Induction Program Standards adopted by the commission  
32 in 1997.

33 (2) Support beginning teachers in meeting the competencies  
34 described in the California Standards for the Teaching Profession  
35 adopted by the commission in January 1997.

36 (3) Meet criteria for the cost-effective delivery of program  
37 services.

38 (4) From amounts received from local, state, or resources  
39 available for the purposes of teacher induction programs,

1 contribute not less than two thousand dollars (\$2,000) for the costs  
2 of each beginning teacher served in the induction program.

3 (d) Teachers who have received their preliminary credential in  
4 a district intern program pursuant to Article 7.5 (commencing with  
5 Section 44325) or an intern program pursuant to Article 3  
6 (commencing with Section 44450) of Chapter 3 and who are  
7 participating in an induction program pursuant to this section are  
8 not eligible for funding pursuant to Article 11 (commencing with  
9 Section 44380) of Chapter 2.

10 SEC. 65. Section 44328 of the Education Code is amended to  
11 read:

12 44328. (a) Unless the commission determines that  
13 substantial evidence exists that a person is unqualified to teach,  
14 upon the completion of successful service as a district intern  
15 pursuant to subdivision (b) of Section 44325, and upon the  
16 recommendation of the school district governing board, the  
17 commission shall award professional credentials to district interns  
18 in the same manner as applicants recommended for credentials by  
19 institutions that operate approved programs of professional  
20 preparation.

21 (b) Notwithstanding paragraphs (1) and (2) of subdivision (a)  
22 of Section 44225, paragraphs (3), (4), (5), and (6) of subdivision  
23 (b) of Section 44259, paragraphs (1), (2), (3), and (4) of  
24 subdivision (c) of Section 44259, and Sections 44261, 44265, and  
25 44335, it is the intent of the Legislature that, upon  
26 recommendation by the governing board, district interns shall be  
27 issued professional credentials, rather than preliminary  
28 credentials, upon the completion of successful service as a teacher  
29 pursuant to subdivision (b) of Section 44325, unless the governing  
30 board recommends, and the commission finds substantial  
31 evidence, that the person is not qualified to teach. A school district  
32 may require a district intern who is pursuing a professional  
33 credential to complete an approved induction program if funds are  
34 available; or approved coursework in accordance with paragraph  
35 (5) of subdivision (c) of Section 44259. Pursuant to Article 11  
36 (commencing with Section 44380), teachers participating in an  
37 induction program pursuant to Article 4.5 (commencing with  
38 Section 44279.1) are no longer eligible for funding under the  
39 district intern program.

(c) Notwithstanding subdivisions (a) and (b), the governing board of a school district may request the commission to issue a preliminary teaching credential to an intern who has met the requirements for a preliminary teaching credential, as specified in subdivision (b) of Section 44259, but who has not successfully completed the requirements for a professional clear credential pursuant to subdivision (c) of Section 44259.

(d) Notwithstanding Section 44261, the preliminary credential awarded to any district intern holding a district intern credential to teach bilingual education classes shall be a basic teaching credential with a bilingual-crosscultural language and academic development emphasis. Notwithstanding Section 44265, the preliminary credential awarded to any district intern who holds a district intern credential to teach special education pupils with mild and moderate disabilities shall be a special education specialist instruction credential that authorizes the holder to teach special education pupils with mild and moderate disabilities.

(e) It is the intent of the Legislature that institutions of higher education that operate approved programs of professional preparation work cooperatively with school districts that offer district intern programs for a special education specialist credential to apply the regular education coursework and fieldwork from the special education district intern program toward earning a multiple or single subject teaching credential through the institution.

SEC. 66. Section 44735 of the Education Code is amended to read:

44735. (a) The Teaching As A Priority Block Grant is hereby created to be administered by the ~~State Department of Education~~ *department* with the approval of the State Board of Education. The ~~State Department of Education~~ *department* shall award block grants to school districts on a competitive basis to provide incentives to attract credentialed teachers to be employed and retained in high-priority schools.

(b) (1) To be eligible to receive a full block grant in the third year of participation, a school district shall demonstrate a net decrease in the number of teachers holding an emergency permit or waiver at each school ranked in the bottom half of the ~~academic performance index~~ *Academic Performance Index* pursuant to Article 2 (commencing with Section 52051) of Chapter 6.1.

(2) After two years of receiving a block grant, a school district that fails to demonstrate a net decrease in the number of teachers holding an emergency permit or waiver at any of its schools ranked in the bottom half of the ~~academic performance index~~ *Academic Performance Index* shall have the amount of the school's block grant reduced by the amount of funds generated by pupils enrolled in that school.

(3) For purposes of this subdivision, "net decrease" shall be determined by comparing the number of teachers employed who hold an emergency permit or waiver at the end of the second year of implementation to the number of teachers employed who held an emergency permit or waiver prior to the implementation of the block grant.

(4) This subdivision does not apply to any school district with fewer than 2,501 units of average daily attendance that is in a county that is within the fourth through eighth class as defined in Section 1205.

(5) This subdivision is applicable only when stable funding for the Teaching As A Priority Block Grant program is provided in the annual Budget Act. For purposes of this subdivision, stable funding means no more than a 5-percent variation in funding from one fiscal year to the next.

(c) (1) Block grant funds may be used at the discretion of a school district for teacher recruitment and retention incentives with the target of reducing the number of teachers on emergency permits. Incentives shall only be used to hire and retain credentialed teachers. Teacher recruitment and retention incentives may include, but are not limited to, all of the following:

(A) Signing bonuses.

(B) Improved work conditions.

(C) Teacher compensation.

(D) Housing subsidies.

(2) A school district receiving block grant funds pursuant to this section may offer incentives to recruit and retain credentialed teachers interested in attaining certification pursuant to Section 44253.3 or 44253.4. Those incentives may include, but are not limited to, both of the following:

(A) Reimbursements to cover the costs of examinations necessary to attain certification pursuant to Sections 44253.3 and 44253.4.

(B) Reimbursements to cover the costs of coursework necessary for preparation programs offering emphasis in certification pursuant to Sections 44253.3 and 44253.4.

(d) Funding shall be allocated to school districts on a ~~per pupil~~ *per-pupil* basis for pupils enrolled in schools ranked in the bottom half of the ~~academic performance index~~ *Academic Performance Index* pursuant to Article 2 (commencing with Section 52051) of Chapter 6.1. Within the bottom half of the academic performance index, schools ranked in deciles 1, 2, and 3 shall receive 1½ times the funding per pupil of schools ranked in deciles 4 and 5. No less than the amount of funding generated by pupils in schools ranked in deciles 1, 2, and 3 shall be expended in those schools.

(e) School districts shall apply to the ~~State Department of Education~~ *department* on behalf of their schools. The district application shall contain information that is specific to each school. Applications shall contain baseline information on the number of teachers with waivers or emergency permits at each school in accordance with subdivision (c).

(f) School districts that participate in the program established in this section shall be encouraged to participate in regional teacher recruitment centers operated by consortia pursuant to Section 44751.

(g) Funds appropriated for the purposes of this chapter shall supplement, and not supplant, existing efforts to recruit and retain fully credentialed teachers in the school district.

(h) The State Board of Education shall submit an evaluation of the program created by this chapter to the Legislature by January 1, 2004.

SEC. 67. Section 44830.3 of the Education Code is amended to read:

44830.3. (a) The governing board of any school district that maintains kindergarten or grades 1 to 12, inclusive, ~~or that~~ ~~maintains~~ classes in bilingual education, or special education programs for pupils with mild and moderate disabilities; may, in consultation with an accredited institution of higher education offering an approved program of pedagogical teacher preparation, employ persons authorized by the Commission on Teacher Credentialing to provide service as district interns to provide instruction to pupils in those grades or classes as a classroom teacher. The governing board shall require that each district intern

1 be assisted and guided by a certificated employee selected through  
2 a competitive process adopted by the governing board after  
3 consultation with the exclusive teacher representative unit or by  
4 personnel employed by institutions of higher education to  
5 supervise student teachers. These certificated employees shall  
6 possess valid certification at the same level, or of the same type,  
7 of credential as the district interns they serve.

8 (b) The governing board of each school district employing  
9 district interns shall develop and implement a professional  
10 development plan for district interns in consultation with an  
11 accredited institution of higher education offering an approved  
12 program of pedagogical preparation. The professional  
13 development plan shall include all of the following:

14 (1) Provisions for an annual evaluation of the district intern.

15 (2) As the governing board determines necessary, a description  
16 of courses to be completed by the district intern, if any, and a plan  
17 for the completion of preservice or other clinical training, if any,  
18 including student teaching.

19 (3) Mandatory preservice training for district interns tailored to  
20 the grade level or class to be taught, through either of the following  
21 options:

22 (A) One hundred twenty clock hours of preservice training and  
23 orientation in the aspects of child development, classroom  
24 organization and management, pedagogy, and methods of  
25 teaching the subject field or fields in which the district intern will  
26 be assigned, which training and orientation period shall be under  
27 the direct supervision of an experienced permanent teacher. In  
28 addition, persons holding district intern certificates issued by the  
29 commission pursuant to Section 44325 shall receive orientation in  
30 methods of teaching pupils with mild and moderate disabilities. At  
31 the conclusion of the preservice training period, the permanent  
32 teacher shall provide the district with information regarding the  
33 area that should be emphasized in the future training of the district  
34 intern.

35 (B) The successful completion, prior to service by the intern in  
36 any classroom, of six semester units of coursework from a  
37 regionally accredited college or university, designed in  
38 cooperation with the school district to provide instruction and  
39 orientation in the aspects of child development and the methods of

1 teaching the subject matter or matters in which the district intern  
2 will be assigned.

3 (4) Instruction in child development and the methods of  
4 teaching during the first semester of service for district interns  
5 teaching in kindergarten or grades 1 to 6, inclusive, including  
6 bilingual education classes and, for persons holding district intern  
7 certificates issued by the commission pursuant to Section 44325,  
8 special education programs for pupils with mild and moderate  
9 disabilities at those levels.

10 (5) Instruction in the culture *of* and methods of teaching  
11 bilingual children during the first year of service for district interns  
12 teaching children in bilingual classes and, for persons holding  
13 district intern certificates issued by the commission pursuant to  
14 Section 44325, instruction in the etiology *of* and methods of  
15 teaching children with mild and moderate disabilities.

16 (6) Any other criteria that may be required by the governing  
17 board.

18 (7) In addition to the requirements set forth in paragraphs (1)  
19 to (6), inclusive, the professional development plan for district  
20 interns teaching in special education programs for pupils with mild  
21 and moderate disabilities also shall include 120 clock hours of  
22 mandatory training and supervised fieldwork that shall include,  
23 but not be limited to, instructional practices, and the procedures  
24 and pedagogy of both general education programs and special  
25 education programs that teach pupils with disabilities.

26 (8) In addition to the requirements set forth in paragraphs (1)  
27 to (6), inclusive, the professional development plan for district  
28 interns teaching bilingual classes shall also include 120 clock  
29 hours of mandatory training and orientation, which shall include,  
30 but not be limited to, instruction in subject matter relating to  
31 bilingual-crosscultural language and academic development.

32 (9) The professional development plan for district interns  
33 teaching in special education programs for pupils with mild and  
34 moderate disabilities shall be based on the standards adopted by  
35 the commission as provided in subdivision (a) of Section 44327.

36 (c) Each district intern and each district teacher assigned to  
37 supervise the district intern during the preservice period shall be  
38 compensated for the preservice period required pursuant to  
39 subparagraph (A) or (B) of paragraph (3) of subdivision (b). The





1 compensation shall be that which is normally provided by each  
2 district for staff development or in-service activity.

3 (d) Upon completion of service sufficient to meet program  
4 standards and performance assessments, the governing board may  
5 recommend to the Commission on Teacher Credentialing that the  
6 district intern be credentialed in the manner prescribed by Section  
7 44328.

8 SEC. 68. Section 47634 of the Education Code is amended to  
9 read:

10 47634. The Superintendent of Public Instruction shall  
11 annually compute a categorical block grant amount for each  
12 charter school as follows:

13 (a) The superintendent shall compute, as of June 30, 1999, the  
14 estimated statewide average amount of funding for other state  
15 categorical aid per unit of average daily attendance received by  
16 school districts in 1998–99, for each of four grade level ranges:  
17 kindergarten and grades 1, 2, and 3; grades 4, 5, and 6; grades 7 and  
18 8; and grades 9 to 12, inclusive. For purposes of this computation,  
19 other state categorical aid is limited to the following programs:

20 (1) The Agricultural Vocational Education Incentive Program,  
21 as set forth in Article 7.5 (commencing with Section 52460) of  
22 Chapter 9 of Part 28.

23 (2) Apprentice education established pursuant to Article 8  
24 (commencing with Section 8150) of Chapter 1 of Part 6.

25 (3) The Beginning Teacher Support and Assessment System as  
26 set forth in Article 4.5 (commencing with Section 44279.1) of  
27 Chapter 2 of Part 25.

28 (4) College preparation programs as set forth in Chapter 8  
29 (commencing with Section 60830) of Part 33, the Academic  
30 Improvement and Achievement Act as set forth in Chapter 12  
31 (commencing with Section 11020) of Part 7, and the advanced  
32 placement program as set forth in Chapter 8.3 (commencing with  
33 Section 52240) of Part 28.

34 (5) Community day schools as set forth in Article 3  
35 (commencing with Section 48660) of Chapter 4 of Part 27.

36 (6) The Instructional Time and Staff Development Reform  
37 Program, as set forth in Article 7.5 (commencing with Section  
38 44579) of Chapter 3 of Part 25.



- 1 (7) The School-Based Pupil Motivation and Maintenance  
2 Program and Dropout Recovery Act, as set forth in Article 7  
3 (commencing with Section 54720) of Chapter 9 of Part 29.
- 4 (8) The Early Intervention for School Success Program, as set  
5 forth in Article 4.5 (commencing with Section 54685) of Chapter  
6 9 of Part 29.
- 7 (9) Education Technology pursuant to Article 15 (commencing  
8 with Section 51870.5) of Chapter 5 of Part 28.
- 9 (10) Foster youth programs pursuant to Chapter 11.3  
10 (commencing with Section 42920) of Part 24.
- 11 (11) Gifted and talented pupil programs pursuant to Chapter 8  
12 (commencing with Section 52200) of Part 28.
- 13 (12) The Healthy Start Support Services for Children Act, as  
14 set forth in Chapter 5 (commencing with Section 8800) of Part 6.
- 15 (13) High-Risk First-Time Offenders ~~program~~ *Program*  
16 pursuant to Chapter 2 (commencing with Section 47760) of Part  
17 26.95.
- 18 (14) The General Fund contribution to the State Instructional  
19 Material Fund pursuant to Article 3 (commencing with Section  
20 60240) of Chapter 2 of Part 33.
- 21 (15) Intersegmental programs for kindergarten and grades 1 to  
22 12, inclusive, funded by Item 6110-230-0001 of Section 2.00 of  
23 the Budget Act of 1998.
- 24 (16) Proposition 98 educational programs pursuant to Item  
25 6110-231-0001 of Section 2.00 of the Budget Act of 1998.
- 26 (17) The California Mentor Teacher Program, as set forth in  
27 Section 44253.6.
- 28 (18) The Miller-Unruh Basic Reading Act of 1965, as set forth  
29 in Chapter 2 (commencing with Section 54100) of Part 29.
- 30 (19) The Morgan-Hart Class Size Reduction Act of 1989, as set  
31 forth in Chapter 6.8 (commencing with Section 52080) of Part 28.
- 32 (20) Opportunity schools pursuant to Article 2 (commencing  
33 with Section 48630) of Chapter 4 of Part 27.
- 34 (21) Partnership academies pursuant to Article 5 (commencing  
35 with Section 54690) of Chapter 9 of Part 29.
- 36 (22) Mathematics staff development pursuant to Chapter 3.25  
37 (commencing with Section 44695) and Chapter 3.33  
38 (commencing with Section 44720) of Part 25.



1 (23) Improvement of elementary and secondary education  
2 pursuant to Chapter 6 (commencing with Section 52000) of Part  
3 28.

4 (24) The School Community Policing Partnership Act of 1998,  
5 as set forth in Article 6 (commencing with Section 32296) of  
6 Chapter 2.5 of Part 19.

7 (25) The School/Law Enforcement partnership funded by Item  
8 6110-226-0001 of Section 2.00 of the Budget Act of 1998.

9 (26) Specialized secondary schools pursuant to Chapter 6  
10 (commencing with Section 58800) of Part 31.

11 (27) School personnel staff development and resource centers  
12 pursuant to Chapter 3.1 (commencing with Section 44670) of Part  
13 25.

14 (28) Supplemental grant funding, not otherwise included in the  
15 programs described above, provided by Item 6110-230-0001 of  
16 Section 2.00 of the Budget Act of 1998.

17 (29) Academic progress and counseling review pursuant to  
18 Section 48431.6.

19 (30) The Schiff-Bustamante Standards-Based Instructional  
20 Materials Program as set forth in Chapter 3.5 (commencing with  
21 Section 60450) of Part 33.

22 (31) The Elementary School Intensive Reading Program, as set  
23 forth in Chapter 16 (commencing with Section 53025) of Part 28.

24 (32) The California Public School Library Protection Act, as  
25 set forth in Article 6 (commencing with Section 18175) of Chapter  
26 2 of Part 11.

27 (33) The California Peer Assistance and Review Program for  
28 Teachers, as set forth in Article 4.5 (commencing with Section  
29 44500) of Chapter 3 of Part 25.

30 (34) The State Instructional Materials Fund, as set forth in  
31 Article 3 (commencing with Section 60240) of Chapter 2 of Part  
32 33.

33 (35) The Instructional Materials Funding Realignment  
34 Program, as set forth in Chapter 3.25 (commencing with Section  
35 60420) of Part 33.

36 (36) Mathematics and Reading Professional Development  
37 Program, as set forth in Article 3 (commencing with Section  
38 99230) of Chapter 5 of Part 65.

39 Notwithstanding any other provision of law, charter schools that  
40 have received a block grant pursuant to this section are not eligible



1 to receive separate funding for programs enumerated in this  
2 subdivision or any other state categorical aid programs established  
3 on or after July 1, 1999, that are included in the calculation made  
4 pursuant to this subdivision and for which charter schools are not  
5 required to apply separately.

6 (b) For purposes of the computation prescribed by subdivision  
7 (a), other state categorical aid may not include any of the  
8 following:

9 (1) Programs for which a charter school is required to apply  
10 separately.

11 (2) Programs that support, or are provided in lieu of, capital  
12 expenses.

13 (3) Funding for court-ordered or voluntary desegregation  
14 programs.

15 (4) Special education programs.

16 (5) Economic Impact Aid.

17 (6) Lottery funds.

18 (c) The superintendent shall annually adjust each of the  
19 amounts computed pursuant to subdivision (a) to reflect programs  
20 that existed on or after July 1, 1999, or their successors, that are  
21 subsequently included in or deleted from the categorical block  
22 grant. The Director of Finance shall annually recalculate the  
23 cumulative percentage change required pursuant to subdivision (c)  
24 of Section 47634.5 by adjusting the base year and the budget year  
25 figures to reflect those program shifts.

26 (d) The superintendent shall annually adjust each of the  
27 resulting four amounts computed pursuant to subdivision (a) by  
28 the cumulative percentage change from the 1998–99 fiscal year,  
29 as annually calculated by the Director of Finance pursuant to  
30 Section 47634.5, in the total amount of state funding per unit of  
31 average daily attendance received by ~~K–12~~ local educational  
32 agencies *maintaining kindergarten or any of grades 1 to 12,*  
33 *inclusive*, for purposes that apply toward meeting the requirements  
34 of Section 8 of Article XVI of the California Constitution,  
35 exclusive of funding for adult education, child development  
36 programs, special education, Economic Impact Aid, revenue  
37 limits for school districts and county offices of education, and  
38 programs for which a charter school is required to apply  
39 separately. Programs for which charter schools are required to

1 apply separately are programs that expressly authorize or require  
2 a charter school to apply for funding.

3 (e) The superintendent shall multiply each of the four amounts  
4 computed in subdivision (d) by the charter school's average daily  
5 attendance in the corresponding grade level ranges.

6 (f) The superintendent shall compute the statewide average  
7 amount of funding per identified educationally disadvantaged  
8 pupil received by school districts in the current year pursuant to  
9 Article 2 (commencing with Section 54020) of Chapter 1 of Part  
10 29. This amount shall be multiplied by the number of  
11 educationally disadvantaged pupils enrolled in the charter school.  
12 The resulting amount ~~may~~, if greater than zero, *may* not be less  
13 than the minimum amount of Economic Impact Aid funding to  
14 which a school district of similar size would be entitled pursuant  
15 to Section 54031. For purposes of this subdivision, a pupil who is  
16 eligible for subsidized meals pursuant to Section 49552 and is  
17 identified as an English language learner pursuant to subdivision  
18 (a) of Section 306 shall count as two pupils.

19 (g) The superintendent shall add the amounts computed in  
20 subdivisions (e) and (f). The resulting amount shall be the charter  
21 school's categorical block grant that the superintendent shall  
22 apportion to each charter school from funds appropriated for this  
23 purpose in the annual Budget Act or another statute.

24 (h) Notwithstanding any other provision of law, a charter  
25 school is not eligible to apply for funding under any of the  
26 programs the funding of which is included in the computation of  
27 the categorical block grant. The Superintendent of Public  
28 Instruction shall annually provide each charter school with a list  
29 of these programs and shall ensure that a charter school receives  
30 timely notification of the opportunity to apply for programs  
31 administered by the State Department of Education that are  
32 excluded from the categorical block grant.

33 (i) It is the intent of the Legislature to fully fund the categorical  
34 block grant and to appropriate additional funding that may be  
35 needed in order to compensate for unanticipated increases in  
36 average daily attendance in charter schools. In any fiscal year in  
37 which the department identifies a deficiency in the Charter School  
38 Categorical Block Grant, the department shall identify programs  
39 that are funded toward meeting the requirements of Section 8 of  
40 Article XVI of the California Constitution that will have

1 unobligated funds for the year and the associated balances  
2 available. At the second principal apportionment, the department  
3 shall provide the Department of Finance with a list of those  
4 programs and their available balances, and the amount of the  
5 deficiency in the Charter School Categorical Block Grant. The  
6 Director of Finance shall verify the amount of the deficiency in the  
7 Charter School Categorical Block Grant and direct the Controller  
8 to transfer from those programs to the Charter School Categorical  
9 Block Grant an amount equal to the lesser of the amount available  
10 or the amount needed to fully fund the Charter School Categorical  
11 Block Grant. The Department of Finance shall request the transfer  
12 on or before July 1 and notify the Joint Legislative Budget  
13 Committee within 45 days of the transfer.

14 (j) Categorical block grant funding may be used for any  
15 purpose determined by the governing body of the charter school.

16 SEC. 69. Section 48200.7 of the Education Code is amended  
17 to read:

18 48200.7. (a) The State Department of Education shall  
19 identify the three lowest performing elementary schools in the  
20 Compton Unified School District for purposes of extending the  
21 school year for pupils enrolled in kindergarten or grades 1 and 2  
22 and for those pupils in any of grades 3 to 5, inclusive, who are  
23 performing in mathematics or English language arts two or more  
24 grade levels below the grade in which those pupils are enrolled as  
25 determined under subdivision (d).

26 (b) Beginning with the 1998–99 school year, the Compton  
27 Unified School District may identify schools of the district, in  
28 addition to those identified pursuant to subdivision (a), that are  
29 among the lowest performing schools in the district, and may  
30 provide *extended school year instruction pursuant to Section*  
31 *41601.1* to any pupil enrolled in kindergarten ~~and or any of grades~~  
32 ~~1 to 12, inclusive, in a school identified pursuant to this~~  
33 ~~subdivision who is performing in mathematics or English~~  
34 ~~language arts at a grade level that is two or more grade levels~~  
35 ~~below the grade in which that pupil is enrolled as determined~~  
36 ~~pursuant to subdivision (d), with extended school year instruction~~  
37 ~~pursuant to Section 41601.1.~~

38 (c) Notwithstanding subdivision (b) of this section and Section  
39 41601.1, the amount of funding claimed by the district for  
40 extended year instruction shall not in any year exceed twice the

1 amount claimed pursuant to this section in the 1997–98 fiscal year  
2 as adjusted each year by the inflation adjustment determined  
3 pursuant to Section 42238.1.

4 (d) The determination that a pupil is performing two or more  
5 grade levels below the grade in which that pupil is enrolled shall  
6 be based on any combination of the following:

7 (1) The California Achievement Test-Form E.

8 (2) The Spanish assessment of basic education.

9 (3) Proficiency tests required for graduation.

10 (4) District criterion reference tests based on state curriculum  
11 guides.

12 (5) The STAR test.

13 (e) The Compton Unified School District shall test all pupils in  
14 kindergarten and grades 1 to 12, inclusive, in its lowest performing  
15 schools identified pursuant to subdivisions (a) and (b) prior to  
16 those pupils beginning an extended school year program under this  
17 section. At the end of the school year the school district shall again  
18 test the pupils in kindergarten and grades 1 to 12, inclusive, to  
19 determine the grade level at which those pupils are performing.

20 (f) The ~~State Department of Education~~ *department* shall  
21 approve each of the following areas in each elementary school  
22 identified as high-priority pursuant to subdivision (a):

23 (1) Curricula.

24 (2) Testing instruments.

25 (3) Schoolday length.

26 (4) Teacher selection, teacher mentoring, and staff  
27 development processes.

28 (g) The ~~State Department of Education~~ *department* shall  
29 review teacher compensation, including salary and benefits, in  
30 each elementary school identified as high-priority pursuant to  
31 subdivision (a).

32 (h) The ~~State Department of Education~~ *department* shall  
33 collect data as to each of the following items for each school in  
34 subdivisions (a) and (b):

35 (1) Instructional materials used by, and made available to, the  
36 school.

37 (2) Teacher capacity.

38 (3) Any other baseline data deemed necessary by the  
39 department.



(i) Instruction provided to pupils subject to this section during schooldays in excess of schooldays offered to other pupils shall be devoted to instruction in basic skills in mathematics and English language arts.

(j) In conjunction with the Legislative Analyst, the ~~State Department of Education~~ *department* shall contract for an independent evaluation to determine the effectiveness of the extended school year curriculum, instructional program, and materials provided pursuant to this section and funded pursuant to Section 41601.1 in improving pupil academic outcomes. Testing and data collection conducted pursuant to this section shall be administered under the oversight of the independent evaluator, who shall be provided with copies of all test results. Results of the evaluation shall be reported on or before January 1, 2002, to the Superintendent of Public Instruction, the Legislative Analyst, the Director of Finance, and the appropriate policy and fiscal committees of the Legislature. The Compton Unified School District shall be responsible for all costs incurred pursuant to this subdivision.

(k) A percentage of funding appropriated for purposes of this section, in an amount to be determined by the Superintendent of Public Instruction, shall be used for purposes of testing and data collecting pursuant to this section.

SEC. 70. Section 49414.5 of the Education Code is amended to read:

49414.5. (a) In the absence of a credentialed school nurse or other licensed nurse onsite at the school, each school district may provide school personnel with voluntary emergency medical training to provide emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia, and volunteer personnel shall provide this emergency care, in accordance with standards established pursuant to subdivision (b) and the performance instructions set forth by the licensed health care provider of the pupil. A school employee who does not volunteer or who has not been trained pursuant to subdivision (b) may not be required to provide emergency medical assistance pursuant to this subdivision.

(b) (1) The Legislature encourages the American Diabetes Association to develop performance standards for the training and supervision of school personnel in providing emergency medical

1 assistance to pupils with diabetes suffering from severe  
2 hypoglycemia. The performance standards shall be developed in  
3 cooperation with the ~~Department of Education~~ *department*, the  
4 California School Nurses Organization, the California Medical  
5 Association, and the American Academy of Pediatrics. Upon the  
6 development of the performance standards pursuant to this  
7 paragraph, the State Department of Health Services' Diabetes  
8 Prevention and Control Program shall approve the performance  
9 standards for distribution and make those standards available upon  
10 request.

11 (2) Training established pursuant to this subdivision shall  
12 include all of the following:

13 (A) Recognition and treatment of hypoglycemia.

14 (B) Administration of glucagon.

15 (C) Basic emergency followup procedures, including, but not  
16 limited to, calling the emergency 911 phone number and  
17 contacting, if possible, the pupil's parent or guardian and licensed  
18 health care provider.

19 (3) Training by a physician, credentialed school nurse,  
20 registered nurse, or certificated public health nurse according to  
21 the standards established pursuant to this section shall be deemed  
22 adequate training for the purposes of this section.

23 (4) (A) A school employee shall notify the credentialed school  
24 nurse assigned to the school district if he or she administers  
25 glucagon pursuant to this section.

26 (B) If a credentialed school nurse is not assigned to the school  
27 district, the school employee shall notify the superintendent of the  
28 school district, or his or her designee if he or she administers  
29 glucagon pursuant to this section.

30 (5) All materials necessary to administer the glucagon shall be  
31 provided by the parent or guardian of the pupil.

32 (c) In the case of a pupil who is able to self-test and monitor his  
33 or her blood glucose level, upon written request of the parent or  
34 guardian, and with authorization of the licensed health care  
35 provider of the pupil, a pupil with diabetes shall be permitted to test  
36 his or her blood glucose level and to otherwise provide diabetes  
37 self-care in the classroom, in any area of the school or school  
38 grounds, during any school-related activity, and, upon specific  
39 request by a parent or guardian, in a private location.

(d) For the purposes of this section, the following terms have the following meanings:

(1) “School personnel” means any one or more employees of a school district who volunteer to be trained to administer emergency medical assistance to a pupil with diabetes.

(2) “Emergency medical assistance” means the administration of glucagon to a pupil who is suffering from severe hypoglycemia.

SEC. 71. Section 49452.6 of the Education Code is amended to read:

49452.6. (a) A three-year pilot program is hereby established, whereby any school district may participate in the program if the cost of the school district’s participation is covered with local funding. Participating school districts shall, in conjunction with the scoliosis screening performed pursuant to Section 49452.5, and subject to Section 49451, and in addition to the physical examinations required pursuant to Sections 100275, 124035, and 124090 of the Health and Safety Code, provide for the screening of every female pupil in grade 7 and every male pupil in grade 8 for the risk of developing type 2 diabetes mellitus. The screening shall be in accord with standards and procedures developed by the State Department of Education in consultation with the State Department of Health Services’ Diabetes Control Program, and adopted as regulations by the State Board of Education. The screening shall be performed and supervised only by qualified supervisors of health as specified in Sections 44871 to 44878, inclusive, and Sections 49422 and 49452.5, or pursuant to contract with an agency authorized to perform these services by the county superintendent of schools of the county in which the district is located pursuant to Sections 1750 to 1754, inclusive, and Section 49402, Section 101425 of the Health and Safety Code, and guidelines established by the State Board of Education. The screening shall be performed only by individuals who supervise, or who are eligible to supervise, the scoliosis screening and have been trained to conduct type 2 diabetes mellitus screening.

(b) The screening process shall be noninvasive and shall include, but shall not be limited to, the following:

(1) Measuring the height and weight of the pupil to calculate the pupil’s body mass index.

(2) Examining the pupil’s neck for acanthosis nigricans, a dark pigmentation that may indicate a high insulin level.

1 (3) Documenting the pupil's ethnicity, based on existing school  
2 records. Ethnicities that have the highest risk of developing type  
3 2 diabetes mellitus include Latino, African American, Asian,  
4 American Indian, and Pacific Islander.

5 (4) Considering whether the pupil's existing health records  
6 indicate a family history of type 2 diabetes mellitus.

7 (c) In-service training shall be provided to any person who will  
8 be screening pupils for type 2 diabetes mellitus pursuant to this  
9 section, unless the person has a health care license that already  
10 qualifies him or her to perform that type of screening, and shall be  
11 conducted by appropriately licensed health care providers acting  
12 within the scope of their practice who have received specialized  
13 training in screening for the risk of developing type 2 diabetes  
14 mellitus.

15 (d) No person screening pupils for the risk of type 2 diabetes  
16 mellitus pursuant to this section shall solicit, encourage, or advise  
17 treatment or consultation by that person, or any entity in which that  
18 person has a financial interest, for the risk of type 2 diabetes  
19 mellitus or any other condition discovered in the course of the  
20 screening.

21 (e) The State Department of Education, in consultation with the  
22 State Department of Health Services' Diabetes Control Program,  
23 shall select and review all educational and notification materials  
24 to be sent to the parent or guardian of any pupil suspected of being  
25 at risk for developing type 2 diabetes mellitus. Each participating  
26 school district shall provide for the notification of the parent or  
27 guardian of any pupil suspected of being at elevated risk of  
28 developing type 2 diabetes mellitus, and the notification shall be  
29 provided by mail. The notification shall be culturally and  
30 linguistically appropriate, and shall include an explanation of the  
31 meaning of being at elevated risk of developing type 2 diabetes  
32 mellitus, the significance of exercise and weight control in  
33 preventing the development of it, information on aspects of the  
34 school environment that may contribute to obesity or type 2  
35 diabetes *mellitus*, information on Medi-Cal, the Healthy Families  
36 Program, the Child Health and Disability Prevention Program, and  
37 other public services available for helping with prevention, and  
38 referrals for the pupil and the pupil's parent or guardian to  
39 appropriate community resources, which shall be provided  
40 pursuant to Sections 49426 and 49456. The State Department of

1 Health Services' Diabetes Control Program may identify for the  
2 State Department of Education information which may be  
3 distributed to parents on where health assessments and health care,  
4 including free and low-cost, may be obtained in communities  
5 across the state.

6 (f) A pupil shall be considered at elevated risk of developing  
7 type 2 diabetes mellitus if the pupil's body mass index is above 85  
8 percent and the screening process conducted pursuant to  
9 subdivision (b) indicates that the pupil also meets one of the risk  
10 factors described in paragraphs (2) to (4), inclusive, of that  
11 subdivision.

12 (g) No action of any kind in any court of competent jurisdiction  
13 may be filed against any individual authorized by this section to  
14 supervise or give a screening, by virtue of this section.

15 (h) It is the intent of the Legislature that no participating  
16 healing arts licensee use the screening program for the generation  
17 of referrals or for his or her financial benefit. The Legislature does  
18 not intend to deny or limit the freedom of choice in the selection  
19 of an appropriate health care provider for treatment or  
20 consultation.

21 (i) Each school district that participates in the pilot program  
22 conducted pursuant to this section shall maintain data on the  
23 numbers of pupils screened and found to be at risk of type 2  
24 diabetes mellitus. To the extent possible, the school shall  
25 subsequently communicate with the parent or guardian of a pupil  
26 found to be at elevated risk of type 2 diabetes *mellitus* in order to  
27 determine the interventions, if any, that the parent or guardian has  
28 provided for the pupil. The school district shall maintain this  
29 information for the purpose of evaluation and reporting to the  
30 Legislature. Each school district that participates in the pilot  
31 program shall report to the State Department of Education by no  
32 later than June 30, 2006, regarding all of the following:

33 (1) Its findings concerning the extent to which the pupil  
34 population served by that school district is at risk of developing  
35 type 2 diabetes mellitus.

36 (2) How the data reported in paragraph (1) compare to previous  
37 assumptions about the extent to which the pupil population served  
38 by that school district is at risk of developing type 2 diabetes  
39 mellitus.

(3) Data on whether parents or guardians of pupils suspected of being at risk for developing type 2 diabetes mellitus sought any intervention as a result of the notification specified in subdivision (e).

(j) Nothing in this section applies to, or in any way precludes, the screening of pupils for type 2 diabetes mellitus by any nonparticipating school district.

(k) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 72. Section 52015 of the Education Code is amended to read:

52015. Each plan shall include all of the following:

(a) Curricula, instructional strategies, and materials responsive to the individual educational needs and learning styles of each pupil ~~which~~ *that* enable all pupils to do all of the following:

(1) Make continuous progress and learn at a rate appropriate to their abilities.

(2) Master basic skills in language development and reading, writing, and mathematics pursuant to Sections 51215 and 51216.

(3) Develop knowledge and skills in other aspects of the curriculum, such as arts and humanities; physical, natural, and social sciences; multicultural education; physical, emotional, and mental health; consumer economics; and career education.

(4) Pursue educational interests and develop esteem for self and others, personal and social responsibility, critical thinking, and independent judgment.

Consideration shall be given to the use of community resources, such as museums, libraries, and communications media, to achieve instructional improvement objectives. In addition, consideration shall be given to the use of education technology equipment, including appropriate “technology-based materials,” as defined in Section 60017.1, in each component of the plan to achieve instructional improvement objectives, and to the utilization for this purpose of all funding resources available to the school district or the schoolsite, including state categorical education programs.

(b) Instructional and auxiliary services to meet the special needs of pupils of limited English proficiency consistent with Article 3 (commencing with Section 52160) of Chapter 7 of Part

1 28, including instruction in a language such pupils understand;  
2 educationally disadvantaged pupils; and pupils with exceptional  
3 abilities or needs.

4 (c) A staff development program for teachers, other school  
5 personnel, paraprofessionals, and volunteers as provided in  
6 Section 52019.

7 (d) Improvement of the classroom and school environments,  
8 including improvement of relationships between and among  
9 pupils, school personnel, parents, and the community, and  
10 reduction of the incidence among pupils of violence and  
11 vandalism.

12 (e) Other objectives as established by the council.

13 (f) The proposed expenditure of allowances provided pursuant  
14 to Article 4 (commencing with Section 52045) ~~of~~ and *of* other state  
15 or local funds available to support the school improvement  
16 program.

17 (g) Ongoing evaluation and modification of the school  
18 improvement plan by the council, based on information regarding  
19 *the following*:

20 (1) The degree to which the school is meeting its improvement  
21 objectives as assessed by parents, teachers, other school personnel,  
22 and pupils.

23 (2) Pupil achievement.

24 (3) Improved school environment as measured by indicators  
25 such as (A) the incidence among pupils of absenteeism,  
26 suspension, expulsion, and dropouts and the incidence and costs  
27 of school violence, vandalism, and theft of school or private  
28 property while participating in school activities, (B) pupil attitudes  
29 toward school, self, and others, (C) incidence of absenteeism,  
30 resignations and requests for transfers among teachers and other  
31 school personnel, and (D) satisfaction of teachers, pupils, parents,  
32 administrators, and other school personnel with school services  
33 and decisionmaking processes.

34 (4) The degree to which fiscal expenditures meet the criteria of  
35 the school improvement plan.

36 (h) Improvement of pupil attendance, including parent  
37 awareness of the importance of regular school attendance.

38 SEC. 73. Section 52054 of the Education Code is amended to  
39 read:





52054. (a) Commencing in the 2001–02 fiscal year, by November 15 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program shall do one of the following:

(1) Contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team, consisting of a majority of nonschoolsite personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(2) Contract with an entity that has proven, successful expertise specific to the challenges inherent in high-priority schools. These entities may include, but are not limited to, the following:

(A) Institutions of higher education.

(B) County offices of education.

(C) School district personnel.

(b) The selected external evaluator or entity shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator or entity shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below average performance.

(2) Hold a public meeting at the school, in cooperation with the principal, to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit, at the public meeting, the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator or entity and the community team in the development or modification of the action plan pursuant to this section or Section 52054.3.

(4) Provide technical assistance to the schoolsite.

(5) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator or entity and the community team in the development or modification of the action plan pursuant to this section or Section 52054.3. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(c) By February 15 of the school year in which the school is selected to participate, the selected external evaluator or entity, in collaboration with the broad-based schoolsite and community team selected pursuant to subdivision (a), shall complete a review of the school that identifies weaknesses that contribute to the school's below average performance, make recommendations for improvement, and begin to develop an action plan to improve the academic performance of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a scope that requires reimbursement by the Commission on State Mandates for its implementation.

(d) At a minimum, the action plan shall do all of the following:

(1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 33126.

(2) Identify the current barriers at the school and district toward improvements in pupil achievement.

(3) Identify schoolwide and districtwide strategies to remove these barriers.

(4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.

(5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information regarding the achievement of

1 English language learners, pupils with exceptional needs, pupils  
2 who qualify for free and reduced price meals, and pupils in  
3 numerically significant subgroups.

4 (6) Set short-term academic objectives pursuant to Section  
5 52052 for a two-year period that will allow the school to make  
6 adequate progress toward the growth targets established for each  
7 participating school for pupil achievement as measured by all of  
8 the following to the extent that the data is available for the school:

9 (A) The achievement test administered pursuant to Section  
10 60640.

11 (B) Graduation rates for grades 7 to 12, inclusive.

12 (C) Attendance rates for pupils and school personnel for  
13 elementary, middle, and secondary schools.

14 (D) Any other indicators approved by the State Board of  
15 Education.

16 (e) The school action plan shall focus on improving pupil  
17 academic performance, improving the involvement of parents and  
18 guardians, improving the effective and efficient allocation of  
19 resources and management of the school, and identifying and  
20 developing solutions that take into account the underlying causes  
21 for low performance by pupils.

22 (f) The team, in the development of the action plan, shall  
23 consult with the exclusive representatives of employee  
24 organizations, where they exist.

25 (g) The school action plan may propose to increase the number  
26 of instructional days offered at the schoolsite and also may propose  
27 to increase up to a full 12 months the amount of time for which  
28 certificated employees are contracted, if all of the following  
29 conditions are met:

30 (1) Provisions of the plan proposed pursuant to this subdivision  
31 shall not violate current applicable collective bargaining  
32 agreements.

33 (2) An agreement is reached with the exclusive representative  
34 concerning staffing specifically to accommodate the extended  
35 school year or 12-month contract.

36 (h) The team, in the development of the action plan, shall  
37 consult with the exclusive representatives of employee  
38 organizations, where they exist.

39 (i) Upon its completion, the action plan shall be submitted to  
40 the governing board of the school ~~districts~~ *district* for its approval

1 at a regularly scheduled public meeting. After the plan is approved,  
2 but no later than May 15 of the year that follows the year the school  
3 is selected to participate, the plan shall be submitted to the  
4 Superintendent of Public Instruction with a request for funding in  
5 the form prescribed by the Superintendent of Public Instruction,  
6 who shall review the school action plan and recommend approval  
7 or disapproval of the school's request for funding to the State  
8 Board of Education.

9 (j) Not later than July 15 of the year next following the year in  
10 which a school is selected for participation, the State Board of  
11 Education shall review and approve or disapprove the school's  
12 request for funding, based on the recommendation of the  
13 Superintendent of Public Instruction. Within 30 days of the State  
14 Board of Education's review, the Superintendent of Public  
15 Instruction shall notify the affected school districts of the state of  
16 the board's action regarding the request for funding. In  
17 conjunction with its approval of a request for funding to  
18 implement a school's action plan, the State Board of Education  
19 may, at the request of the governing board of the school district or  
20 the county board of education for a school under its jurisdiction,  
21 waive all or any part of any provision of this code, or any  
22 regulation adopted by the State Board of Education, controlling  
23 any of the programs listed in clause (i) of subparagraph (B) of  
24 paragraph (1) of subdivision (a) of Section 54761 and Section  
25 64000 if the waiver does not result in a decrease in the instructional  
26 time otherwise required by law or regulation or an increase in state  
27 costs and is determined to be consistent with subdivision (a) of  
28 Section 46300.

29 SEC. 74. Section 52055.615 of the Education Code is  
30 amended to read:

31 52055.615. (a) If the Superintendent of Public Instruction  
32 invites a school to participate in the High Priority Schools Grant  
33 Program, the governing board of the school district shall hold a  
34 public hearing at a regularly scheduled meeting to discuss whether  
35 or not to apply for participation in this program and how to address  
36 the needs of the school and pupils.

37 (b) If a school district, on behalf of an eligible school under its  
38 jurisdiction, decides not to accept the invitation to participate in  
39 the High Priority Schools Grant Program, the governing board of  
40 the school district shall hold a public hearing at a regularly



1 scheduled meeting to discuss the reasons and rationale for not  
2 accepting the invitation and explain how the district intends to  
3 address the needs of the school and pupils. This section does not  
4 apply to school districts with jurisdiction over schools for which  
5 the Superintendent of Public Instruction has indicated that funding  
6 would not be available. The governing board shall not place the  
7 discussion required pursuant to this subdivision on the consent  
8 calendar of the hearing.

9 (c) The governing board shall notify, in writing, the following  
10 persons and entities of the public hearings required pursuant to  
11 subdivisions (a) and (b):

12 (1) Representative parent organizations at the schoolsite,  
13 including the parent-teacher association, ~~parent-teacher~~  
14 *parent-teacher* clubs, and schoolsite councils. The district is  
15 encouraged also to notify parents directly through appropriate  
16 means. Notifications to parents shall comply with Article 4  
17 (commencing with Section 48985) of Chapter 6 of Part 27.

18 (2) All local major media outlets.

19 (3) The local mayor.

20 (4) All members of the city council.

21 (5) All members of the county board of supervisors.

22 (6) County superintendents of schools.

23 (7) County board of education.

24 SEC. 75. Section 52055.625 of the Education Code is  
25 amended to read:

26 52055.625. (a) It is the intent of the Legislature that the lists  
27 contained in paragraph (2) of subdivisions (c), (d), (e), and (f) be  
28 considered options that may be considered by a school in the  
29 development of its school action plan and that a school not adopt  
30 all of the listed options as a condition of funding under the terms  
31 of this act. Instead, this listing of options is intended to provide the  
32 opportunity for focus and strategic planning as schools plan to  
33 address the needs of high-priority pupils.

34 (b) As a condition of the receipt of funds, a school action plan  
35 shall include each of the following essential components:

36 (1) Pupil literacy and achievement.

37 (2) Quality of staff.

38 (3) Parental involvement.

39 (4) Facilities, curriculum, instructional materials, and support  
40 services.

(c) (1) The pupil literacy and achievement component shall contain a strategy to focus on increasing pupil literacy and achievement, with necessary attention to the needs of English language learners. At a minimum, this strategy shall include a plan to achieve the following goals:

(A) Each pupil at the school will be provided appropriate instructional materials aligned with the academic content and performance standards adopted by the State Board of Education as required by law.

(B) Each significant subgroup at the school will demonstrate increased achievement based on API results by the end of the implementation period.

(C) English language learners at the school will demonstrate increased performance based on the English language development test required by Section 60810 and the achievement tests required pursuant to Section 60640.

(2) To achieve the goals in paragraph (1), a school in its action plan may include, among other things, any of the following options:

(A) Selective class size reduction in key curricular areas provided this does not result in a decrease in the proportion of experienced credentialed teachers at the schoolsite.

(B) Increased learning time in key curricular areas identified as needing attention, including mathematics.

(C) Targeted intensive reading instruction utilizing reading capacity-level materials that may include, but are not limited to, the following strategies:

(i) The development of a reading competency program for pupils in grades 5 to 8, inclusive, whose reading scores are at or below the 40th percentile or in the two lowest performance levels, as adopted by the State Board of Education, on the reading portion of the achievement test, authorized by Section 60640. This program may include direct instruction in reading at grade level utilizing the English language arts content standards adopted pursuant to Section 60605. Additionally, this program may offer specialized intervention that utilizes state approved instructional materials adopted pursuant to Section 60200. It is the intent of the Legislature, as a recommendation, that this curriculum consist of at least one class period during the regular schoolday taught by a teacher trained in the English language arts standards pursuant to

1 Section 60605. It is also the intent of the Legislature, as a  
2 recommendation, that periodic assessments throughout the year be  
3 conducted to monitor the progress of the pupils involved.

4 (ii) The use of a library media teacher to work cooperatively  
5 with every teacher and principal at the schoolsite to develop and  
6 implement an independent and free reading program, help  
7 teachers determine a pupil's reading level, order books that have  
8 been determined to meet the needs of pupils, help choose books at  
9 pupils' independent reading levels, and assure that pupils read a  
10 variety of genres across all academic content areas. For purposes  
11 of this article, "library media teacher" means a classroom teacher  
12 who possesses or is in the process of obtaining a library media  
13 teacher services credential consistent with Section 44868.

14 (D) Mentoring programs for pupils.

15 (E) Community, business, or university partnerships with the  
16 school.

17 (d) (1) The quality of staff component shall contain a strategy  
18 to attract, retain, and fairly distribute the highest quality staff at the  
19 school, including teachers, administrators, and support staff. At a  
20 minimum, this strategy shall include a plan to achieve the  
21 following goals:

22 (A) An increase in the number of credentialed teachers  
23 working at that schoolsite.

24 (B) An increase in or targeting of professional development  
25 opportunities for teachers related to the goals of the action plan and  
26 English language development standards adopted by the State  
27 Board of Education aligned with the academic content and  
28 performance standards, including, but not limited to, participation  
29 in professional development institutes established pursuant to  
30 Article 2 (commencing with Section 92220) of Chapter 5 of Part  
31 65.

32 (C) By the end of the implementation period, successful  
33 completion by the schoolsite administrators of a program designed  
34 to maximize leadership skills.

35 (2) To achieve the goals in paragraph (1), a school may include  
36 in its action plan, among others, any of the following options:

37 (A) Incentives to attract credentialed teachers and quality  
38 administrators to the schoolsite, including, but not limited to,  
39 additional compensation strategies similar to those authorized  
40 pursuant to Section 44735.



1 (B) A school district preintern or intern program within which  
2 eligible emergency permit teachers located at the schoolsite would  
3 be required to participate, unless those individuals are already  
4 participating in another teacher preparation program that leads to  
5 the attainment of a valid California teaching credential.

6 (C) Common planning time for teachers, administrators, and  
7 support staff focused on improving pupil achievement.

8 (D) Mentoring for site administrators, peer assistance for  
9 credentialed teachers, and support services for new teachers,  
10 including, but not limited to, the Beginning Teacher Support and  
11 Assessment System.

12 (E) Providing assistance and incentives to teachers for  
13 completion of professional certification programs and toward  
14 attaining BCLAD or CLAD certification.

15 (F) Increasing professional development in state academic  
16 content and performance standards, including English language  
17 development standards.

18 (e) (1) The parental involvement component shall contain a  
19 strategy to change the culture of the school community to  
20 recognize parents and guardians as partners in the education of  
21 their children and to prepare and educate parents and guardians in  
22 the learning and academic progress of their children. At a  
23 minimum, this strategy shall include a commitment to develop a  
24 school-parent compact as required by Section 51101 and a plan to  
25 achieve the goal of maintaining or increasing the number and  
26 frequency of personal parent and guardian contacts each year at the  
27 schoolsite and school-home communications designed to promote  
28 parent and guardian support for meeting state standards and core  
29 curriculum requirements.

30 (2) To achieve the goals in subdivision (a), a school may in its  
31 action plan include, among others, any of the following options:

32 (A) Parent and guardian homework support classes.

33 (B) A program of regular home visits.

34 (C) After school and evening opportunities for parents,  
35 guardians, and pupils to learn together.

36 (D) Training programs to educate parents and guardians about  
37 state standards and testing requirements, including the high school  
38 exit examination.

39 (E) Creation, maintenance, and support of parent centers  
40 located on schoolsites to educate parents and guardians regarding

1 pupil expectations and provide support to parents and guardians in  
2 their efforts to help their children learn.

3 (F) Programs targeted at parents and guardians of special  
4 education pupils.

5 (G) Efforts to develop a culture at the schoolsite focused on  
6 college attendance, including programs to educate parents and  
7 guardians regarding college entrance requirements and options.

8 (H) Providing more bilingual personnel at the schoolsite and at  
9 ~~school-related~~ *school-related* functions to communicate more  
10 effectively with parents and guardians who speak a language other  
11 than English.

12 (I) Providing an opportunity for parents to monitor online, if  
13 the technology is available, and in compliance with applicable  
14 state and federal privacy laws, the academic progress and  
15 attendance of their children.

16 (f) (1) The facilities, curriculum, instructional materials, and  
17 support services component shall contain a strategy to provide an  
18 environment that is conducive to teaching and learning and that  
19 includes the development of a high-quality curriculum and  
20 instruction aligned with the academic content and performance  
21 standards adopted pursuant to Section 60605 and the standards for  
22 English language development adopted pursuant to Section 60811  
23 to measure progress made towards achieving English language  
24 proficiency. At a minimum, this strategy shall include the goal of  
25 providing adequate logistical support, including, but not limited  
26 to, curriculum, quality instruction, instructional materials, support  
27 services, and supplies for every pupil.

28 (2) To achieve the goal specified in paragraph (1), a school in  
29 its action plan may include, among others, any of the following  
30 options:

31 (A) State and locally developed valid and reliable assessments  
32 based on state academic content standards.

33 (B) Increased learning time in key curricular areas identified as  
34 needing attention, including mathematics.

35 (C) The addition of more pupil support services staff,  
36 including, but not limited to, paraprofessionals, counselors,  
37 library media teachers, nurses, psychologists, social workers,  
38 speech therapists, audiologists, and speech pathologists.

39 (D) Pupil support centers for additional tutoring or homework  
40 assistance.

1 (E) Use of most current standards-aligned textbooks adopted  
2 by the State Board of Education, including materials for English  
3 language learners.

4 (F) For secondary schools, offering advanced placement  
5 courses and courses that meet the requirements for admission to  
6 the University of California or the California State University.

7 (g) A school action plan to improve pupil performance that is  
8 developed for participation in the program established pursuant to  
9 this article shall meet the requirements of subdivisions (d) and (e)  
10 of Section 52054 and this article.

11 SEC. 76. Section 52055.655 of the Education Code is  
12 amended to read:

13 52055.655. (a) Notwithstanding subdivision (c) of Section  
14 52055.650, a school participating in the High Priority Schools  
15 Grant Program that meets or exceeds its API growth target shall  
16 continue to receive funding under this program in the amount  
17 specified in Sections 52054.5 and 52055.600 for one additional  
18 year of implementation, less the amount received pursuant to  
19 Section 52057.

20 (b) From funds made available to the ~~State Department of~~  
21 ~~Education~~ *department* pursuant to ~~the act adding this section~~  
22 *Chapter 749 of the Statutes of 2001*, the ~~State Department of~~  
23 ~~Education~~ *department* shall conduct a study on the issue of  
24 sustainability of funding for high-priority schools. The issues to be  
25 addressed in this study shall include, but are not limited to, the  
26 following:

27 (1) An objective rather than a comparative view of the  
28 necessity of sustaining supplemental funding over time to address  
29 the ongoing needs of high-priority pupils, and the impact of  
30 policies that only provide funding over a specified period of time.

31 (2) A description of the ongoing needs of high-priority schools,  
32 as identified in needs assessments submitted pursuant to paragraph  
33 (3) of subdivision (a) of *Section 52055.620* and the sources of  
34 funding schools used to meet these needs.

35 (3) An analysis of the use of funds provided pursuant to this  
36 article and the effectiveness of that use in meeting the continued  
37 or changing needs of communities served by high-priority  
38 schools. This analysis shall include an evaluation of the growth in  
39 academic achievement realized by participating schools and the

1 ability of those schools to sustain growth in academic achievement  
2 if funding is continued.

3 (4) An assessment of whether local, state, and federal resources  
4 are likely to be sufficient to sustain all or some of the academic  
5 improvements made in high-priority schools after this state  
6 subsidy expires, taking into account prospects for the subsequent  
7 pupil population's incidence of poverty and low socioeconomic  
8 status.

9 SEC. 77. Section 52128 of the Education Code is amended to  
10 read:

11 52128. The State Department of Education shall contract for  
12 an independent evaluation of the Class Size Reduction Program to  
13 be completed on or before March 28, 2002. The costs of the  
14 evaluation shall be paid for from funds appropriated to the  
15 department in the Budget Act. The evaluation shall consider the  
16 data collected by school districts pursuant to subdivision (g) of  
17 Section 52123. The evaluation shall determine whether this  
18 program has been effective in improving pupil achievement and  
19 shall identify components of a successful class size reduction  
20 program. The evaluation shall be submitted to the chairpersons of  
21 the Joint Legislative Budget Committee, the Assembly Committee  
22 on Budget, the Senate Committee on Budget and Fiscal Review,  
23 the Assembly Committee on Education, and the ~~Senate committee~~  
24 ~~of Committee on~~ Education, and to the Governor and the Director  
25 of Finance no later than March 28, 2002.

26 SEC. 78. Section 60061.8 of the Education Code is amended  
27 to read:

28 60061.8. (a) Basic instructional materials, as defined by  
29 Section 60010, offered on or after January 1, 2005, shall comply  
30 with all of the following:

31 (1) Print materials shall have sharp, clear, high contrast, and  
32 highly legible fonts. Print materials designed for kindergarten  
33 shall use fonts that are at least 20 point. Print materials designed  
34 for grade 1 shall use fonts that are at least 18 point. Print materials  
35 designed for grade 2 shall use fonts that are at least 16 point.

36 (2) Video products designed for pupils in kindergarten and  
37 grades 1 to 12, inclusive, shall be closed-captioned, as defined by  
38 the Federal Communications Commission, except for the  
39 following:

1 (A) ~~Those video~~ Video products or portions of video products,  
2 if any, for which the publisher does not have the rights to ~~do so~~  
3 *close-caption*.

4 (B) ~~Those video~~ Video products or portions of video products  
5 that are open-captioned, meaning that all viewers see the captioned  
6 information.

7 (3) (A) Internet resources and digital multimedia programs  
8 intended for use by the general population of pupils, for pupils in  
9 kindergarten and grades 1 to 12, inclusive, shall at least meet the  
10 standards for accessibility, as set forth in Section 508 of the  
11 Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and  
12 regulations implementing that act as set forth in Part 1194 of Title  
13 36 of the Code of Federal Regulations, unless meeting those  
14 standards would do any of the following:

15 (i) Fundamentally alter the nature of the instructional activity.

16 (ii) Result in those resources or programs placing an undue  
17 financial and administrative burden on the state agencies, school  
18 districts, or schools that would likely access or utilize the resources  
19 or programs, as determined by the affected agencies in  
20 collaboration with the publishers.

21 (iii) Cause those resources or programs to fail to meet standards  
22 otherwise required by statute or regulation.

23 (B) In order to facilitate access by pupils with disabilities who  
24 are progressing in the general curriculum, to the extent  
25 technologically feasible, a digital multimedia program shall allow  
26 the user to control sizing of images and fonts, speed and volume  
27 of audio, colors or contrast, or both colors and contrast, and other  
28 inherently transformable attributes, but not for modification of  
29 content, to match individual performance and abilities. If a  
30 publisher is not able to create a multimedia program that satisfies  
31 the requirements of this subparagraph, the publisher shall provide  
32 the State Department of Education, upon request, with computer  
33 files or other electronic versions of textual content of basic  
34 instructional materials compatible with braille transcription,  
35 meeting department specifications at no additional cost, and as a  
36 condition of sale.

37 (b) This section does not apply to basic instructional materials  
38 adopted, prior to January 1, 2005, by the state board pursuant to  
39 Section 60200, to the extent those instructional materials do not  
40 already comply with this section. A publisher of basic instructional

1 materials adopted before January 1, 2005, may voluntarily modify  
2 those materials as may be necessary to comply with this section.

3 SEC. 79. Section 60640 of the Education Code, as added by  
4 Section 5 of Chapter 773 of the Statutes of 2003, is amended to  
5 read:

6 60640. (a) There is hereby established the Standardized  
7 Testing and Reporting Program, to be known as the STAR  
8 Program.

9 (b) Commencing in the 2004–05 fiscal year and each fiscal year  
10 thereafter, and from the funds available for that purpose, each  
11 school district, charter school, and county office of education shall  
12 administer to each of its pupils in grades 3 and 8 the achievement  
13 test designated by the State Board of Education pursuant to Section  
14 60642 and shall administer to each of its pupils in grades 2 to 11,  
15 inclusive, the standards-based achievement test provided for in  
16 Section 60642.5. The State Board of Education shall establish a  
17 testing period to provide that all schools administer these tests to  
18 pupils at approximately the same time during the instructional  
19 year, except as necessary to ensure test security and to meet the  
20 final filing date.

21 (c) The publisher and the school district shall provide two  
22 makeup days for the testing of previously absent pupils within the  
23 testing period established by the State Board of Education in  
24 subdivision (b).

25 (d) The governing board of the school district may administer  
26 achievement tests in grades other than those required by  
27 subdivision (b) as it deems appropriate.

28 (e) Pursuant to paragraph (17) of subsection (a) of Section 1412  
29 of Title 20 of the United States Code, individuals with exceptional  
30 needs, as defined in Section 56026, shall be included in the testing  
31 requirement of subdivision (b) with appropriate accommodations  
32 in administration, where necessary, and those individuals with  
33 exceptional needs who are unable to participate in the testing, even  
34 with accommodations, shall be given an alternate assessment.

35 (f) At the option of the school district, a pupil with limited  
36 English proficiency who ~~are~~ *is* enrolled in any of grades 2 to 11,  
37 inclusive, may take a second achievement test in ~~their~~ *his or her*  
38 primary language. Primary language tests administered pursuant  
39 to this subdivision and subdivision (g) shall be subject to the  
40 requirements of subdivision (a) of Section 60641. These primary



1 language tests shall produce individual pupil scores that are valid  
2 and reliable. Notwithstanding any other law, the State Board of  
3 Education shall designate for use, as part of this program, a single  
4 primary language test in each language for which a test is available  
5 for grades 2 to 11, inclusive, pursuant to the process used for  
6 designation of the assessment chosen in the 1997–98 fiscal year,  
7 as specified in Sections 60642 and 60643, as applicable.

8 (g) A pupil of limited English proficiency who is enrolled in  
9 any of grades 2 to 11, inclusive, shall be required to take a test in  
10 ~~their~~ *his or her* primary language if a test is available, if fewer than  
11 12 months have elapsed after ~~their~~ *his or her* initial enrollment in  
12 any public school in the state.

13 (h) (1) The Superintendent of Public Instruction shall  
14 apportion funds to school districts to enable school districts to  
15 meet the requirements of subdivisions (b), (f), and (g).

16 (2) The State Board of Education shall annually establish the  
17 amount of funding to be apportioned to school districts for each  
18 test administered and shall annually establish the amount that each  
19 publisher shall be paid for each test administered under the  
20 agreements required pursuant to Section 60643. The amounts to  
21 be paid to the publishers shall be determined by considering the  
22 cost estimates submitted by each publisher each September and the  
23 amount included in the annual Budget Act, and by making  
24 allowance for the estimated costs to school districts for compliance  
25 with the requirements of subdivisions (b), (f), and (g).

26 (3) An adjustment to the amount of funding to be apportioned  
27 per test may not be valid without the approval of the Director of  
28 Finance. A request for approval of an adjustment to the amount of  
29 funding to be apportioned per test shall be submitted in writing to  
30 the Director of Finance and the chairpersons of the fiscal  
31 committees of both houses of the Legislature with accompanying  
32 material justifying the proposed adjustment. The Director of  
33 Finance is authorized to approve only those adjustments related to  
34 activities required by statute. The Director of Finance shall  
35 approve or disapprove the amount within 30 days of receipt of the  
36 request and shall notify the chairpersons of the fiscal committees  
37 of both houses of the Legislature of the decision.

38 (i) For the purposes of making the computations required by  
39 Section 8 of Article XVI of the California Constitution, the  
40 appropriation for the apportionments made pursuant to paragraph



(1) of subdivision (h), and the payments made to the publishers under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the department and the contractor, are “General Fund revenues appropriated for school districts,” as defined in subdivision (c) of Section 41202, for the applicable fiscal year, and included within the “total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,” as defined in subdivision (e) of Section 41202, for that fiscal year.

(j) As a condition to receiving an apportionment pursuant to subdivision (h), a school district shall report to the superintendent all of the following:

(1) The number of pupils enrolled in the school district in grades 2 to 11, inclusive.

(2) The number of pupils to whom an achievement test was administered in grades 2 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

(k) This section shall become operative July 1, 2004.

SEC. 80. Section 64201 of the Education Code is amended to read:

64201. (a) The California Quality Education Commission is hereby established, to become operative on July 1, 2003, for the purpose of developing, evaluating, validating, and refining a Quality Education Model for prekindergarten through grade 12, inclusive, to provide state policymakers with adequate tools to enable them to establish the reasonable costs of schools and the best direct available resources so that the vast majority of pupils may meet academic performance standards established by the state. The work of the commission shall serve to implement the principles and direction described in the final report of the Joint Committee to Develop a Master Plan for Education, and shall identify the educational components, educational resources, and corresponding costs necessary to provide the opportunity for a quality education to every pupil.

(b) (1) The commission shall be composed of 13 members, who shall be representative of the diversity of the state population, and shall include:

(A) Leaders from business and education.

1 (B) Representatives of elementary schools, middle schools,  
2 and high schools.

3 (C) Representatives of urban districts, suburban districts, and  
4 rural districts.

5 (D) Representatives of the research community with  
6 experience in educational policy and best practices.

7 (2) Except for the first appointments to the California Quality  
8 Education Commission, a member shall serve a four-year term. A  
9 person may not be appointed to serve more than two consecutive  
10 terms. The first terms of the members first appointed to the  
11 California Quality Education Commission shall be as follows:

12 (A) Three shall serve a term expiring August 1, 2005.

13 (B) Five shall serve a term expiring August 1, 2006.

14 (C) Five shall serve a term expiring August 1, 2007.

15 (3) The commission members shall be appointed as follows:

16 (A) Seven members shall be appointed by the Governor and  
17 approved by the Senate. Of the seven members appointed by the  
18 Governor and approved by the Senate, one shall be a currently  
19 employed public school teacher, one shall be a currently employed  
20 public school administrator, and one shall be a current public  
21 school board member. The terms of these members first appointed  
22 shall be staggered so that the terms of two members shall expire  
23 on August 1, 2005, the terms of two members shall expire on  
24 August 1, 2006, and the terms of three members shall expire on  
25 August 1, 2007.

26 (B) Two members shall be appointed by the Senate Committee  
27 on Rules. The terms of these members first appointed shall be  
28 staggered so that the term of one member shall expire on August  
29 1, 2006, and the term of the other shall expire on August 1, 2007.

30 (C) Two members shall be appointed by the Speaker of the  
31 Assembly. The terms of these members first appointed shall be  
32 staggered so that the term of one member shall expire on August  
33 1, 2006, and the term of the other shall expire on August 1, 2007.

34 (D) Two members shall be appointed by the Superintendent of  
35 Public Instruction. The terms of these members first appointed  
36 shall be staggered so that the term of one member shall expire on  
37 August 1, 2005, and the term of the other shall expire on August  
38 1, 2006.



1 (4) (A) The commission, by majority vote of all its sitting  
2 members, shall elect its own chairperson from among its sitting  
3 members.

4 (B) The commission shall appoint an executive director, who  
5 shall be exempt from the State Civil Service Act (Part 2  
6 (commencing with Section 18500); *of* Division 3; *of* Title 2; *of the*  
7 Government Code), and may in its discretion remove him or her  
8 by a majority vote of all its members. The executive director shall  
9 be the secretary to the commission and the commission's chief  
10 executive officer. The executive director shall receive the salary  
11 that the commission determines, and, subject to appropriations,  
12 other prerequisites that the commission determines.

13 (C) Pursuant to subdivision (a) of Section 11126 of the  
14 Government Code, the commission may hold closed sessions  
15 when considering matters relating to the recruitment,  
16 appointment, employment, or removal of the executive director.  
17 Decisions made during a closed session of the commission related  
18 to the recruitment, appointment, employment, or removal of the  
19 executive director shall be made known at the next public meeting  
20 of the commission.

21 (5) (A) A vacancy on the commission shall be filled within 30  
22 days by the appointing power that appointed the prior holder of the  
23 position. An appointment to fill a vacancy shall be for the  
24 remaining portion of the term of the member whom the appointee  
25 succeeds. A vacancy may not impair the right of the remaining  
26 sitting members to exercise all of the powers of the commission.

27 (B) A majority of the sitting members of the commission  
28 constitutes a quorum for the transaction of business.

29 (C) "Sitting member" means an individual who has been  
30 appointed and is currently serving on the California Quality  
31 Education Commission.

32 (c) The commission shall do all of the following:

33 (1) Identify key issues to address in developing, evaluating,  
34 validating, and refining the Quality Education Model. The  
35 commission shall develop complete descriptions of prototype  
36 schools, at least one for each of the three levels of elementary and  
37 secondary education, to form models that fairly capture the  
38 diversity of public schools in California.

39 (2) Determine an adequate base funding amount for each of the  
40 three prototype schools.

(3) Recommend funding adjustments to allow schools that meet certain criteria to receive additional funding beyond the base funding amount. The funding adjustments shall be limited to both of the following:

(A) A district characteristic adjustment that focuses on the extraordinary needs of certain schools due to their geographic locations, including transportation needs and weather challenges.

(B) A pupil characteristic adjustment that is limited to the following three areas:

(i) Special education programs.

(ii) Services for English language learners who have been enrolled in California public schools for less than five years.

(iii) Programs for low-income pupils.

(4) Establish a category of grants to be known as initiatives that shall be limited in duration and serve either of the following purposes:

(A) To pilot and evaluate a proposed new program at one or two schools prior to implementing the program statewide.

(B) To meet a school's immediate but temporary needs for additional funding to mitigate the effects of an unforeseen short-term problem faced by the school.

(5) Focus on practical alternatives that are achievable within the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(6) Solicit comments, criticisms, and suggestions from professional educators, education administrators, and education policy experts relative to the elements of the Quality Education Model. The commission shall consult expert panels for advice relating to research-based, best practices most associated with high pupil achievement.

(7) Solicit public comments, criticisms, and suggestions relative to the elements of the Quality Education Model. The commission shall provide the public with information sufficient to enable interested members of the public to understand the process being used to evaluate, validate, and refine the Quality Education Model, and the reasonable choices or options under consideration. The commission shall provide the public with information explaining the criteria and models chosen and the basis for those choices.

(8) Rely upon the most accurate available cost data, cost estimation methods, and reasonable and expert assumptions in those instances in which data are lacking. The commission shall identify data gaps, modeling assumptions, and recommendations for near-term and long-term improvement of the model.

(9) Deliver a report, comprised of the prototype models and the commission's findings and recommendations, to the Governor and Legislature no later than 12 months after the commission first convenes. The report shall include recommendations for any statutory changes to conform the existing school finance structure to the Quality Education Model proposed in the report.

(d) The commission shall, upon delivery of the report, continue as a standing commission, its members serving staggered terms, with the following responsibilities:

(1) To test the Quality Education Model's reliability, by evaluating the accuracy of the cost elements and assessing whether moneys are actually used to desired effects.

(2) To refine the means with which to account for missing elements, including intangible factors or quality indicators that affect pupil achievement and for which data are not readily available.

(3) To identify the Quality Education Model's assumptions, assess the validity of those assumptions, and improve their accuracy, especially by finding those resources and methods that successful schools embody.

(4) To develop the capacity to estimate and forecast factors, including the cost of the Quality Education Model's implementation given model refinement, the growth of applicable revenues, the pace of implementation, and the effects of the model on pupil performance.

(5) To make recommendations for improvements in the state's data-gathering systems.

SEC. 81. Section 66271.8 of the Education Code is amended to read:

66271.8. (a) The Legislature finds and declares that female students should be accorded opportunities for participation in public postsecondary educational institution athletic programs equivalent to those accorded male students.

(b) In apportioning public funds, public postsecondary educational institutions shall apportion amounts available for

1 athletics to ensure that equitable amounts will be allocated for all  
2 students, except that allowances may be made for differences in  
3 the costs of various athletic programs. Notwithstanding any other  
4 provision of law, no public funds shall be used in connection with  
5 any athletic program conducted under the auspices of a public  
6 postsecondary educational institution, or any student organization  
7 within the postsecondary educational institution, that does not  
8 provide equivalent opportunity to both sexes for participation and  
9 use of facilities. The factors considered when determining whether  
10 an educational institution has provided equivalent opportunity  
11 include, but are not limited to, all of the following:

12 (1) Whether the selection of sports and levels of competition  
13 offered effectively accommodate the athletic interests and abilities  
14 of members of both sexes.

15 (2) The provision of equipment and supplies.

16 (3) Scheduling of games and practice times.

17 (4) Selection of the season for a sport.

18 (5) Location of the games and practices.

19 (6) Compensation for coaches.

20 (7) Travel arrangements.

21 (8) Per diem.

22 (9) Locker rooms.

23 (10) Practice and competitive facilities.

24 (11) Medical services.

25 (12) Housing facilities.

26 (13) Dining facilities.

27 (14) Scholarships.

28 (15) Publicity.

29 (c) Whether a postsecondary educational institution has  
30 effectively accommodated the athletic interests and abilities of  
31 members of both sexes shall be assessed in any one of the  
32 following ways:

33 (1) Whether intercollegiate level participation opportunities  
34 for male and female students are provided in numbers substantially  
35 proportionate to their respective enrollments.

36 (2) Where the members of one sex have been and are  
37 underrepresented among intercollegiate athletes, whether the  
38 institution can show a history and continuing practice of program  
39 expansion that is demonstrably responsive to the developing  
40 interest and abilities of the members of that sex.



1 (3) Where the members of one sex are underrepresented among  
2 intercollegiate athletes, and the institution cannot show a history  
3 and continuing practice of program expansion as required in  
4 paragraph (2), whether the institution can demonstrate that the  
5 interests and abilities of the members of that sex have been fully  
6 and effectively accommodated by the present program.

7 (d) Nothing in this section shall be construed to invalidate any  
8 existing consent decree or any other settlement agreement entered  
9 into by an educational institution to address gender equity in  
10 athletic programs.

11 (e) Nothing in this section shall be construed to require a public  
12 postsecondary educational institution to require competition  
13 between male and female students in ~~school-sponsored~~  
14 *school-sponsored* athletic programs.

15 (f) If an educational institution must cut its athletic budget, the  
16 educational institution shall do so consistently with its legal  
17 obligation to comply with both state and federal gender equity  
18 laws.

19 (g) It is the intent of the Legislature that the three-part test  
20 articulated in subdivision (c) be interpreted as it has been in the  
21 policies and regulations of the Office of Civil Rights in effect on  
22 January 1, 2003.

23 SEC. 82. Section 67359.13 of the Education Code is amended  
24 to read:

25 67359.13. (a) Notwithstanding any other provision of law,  
26 the University of California, the California State University, and  
27 community college districts may participate in this act, if the  
28 Regents of the University of California, the Trustees of the  
29 California State University, or the governing board of each  
30 community college district, respectively, adopt a resolution  
31 approving that participation. A participating institution of higher  
32 education shall pledge a portion of the lottery revenues allocated  
33 annually from the California State Lottery Education Fund to the  
34 University of California, the California State University, and  
35 community college districts as a dedicated revenue source to repay  
36 bonds issued by the authority under the act.

37 (b) The University of California, the California State  
38 University, and community college districts may each pledge an  
39 amount up to the equivalent of 25 percent, but not more than 25  
40 percent, of the allocation to the University of California, the



1 California State University, and community college districts,  
2 respectively, in the 1996–97 fiscal year from the California State  
3 Lottery Education Fund.

4 (c) To the extent that the University of California, the  
5 California State University, and community college districts  
6 participate in the act, the Regents of the University of California,  
7 the Trustees of the California State University, and the governing  
8 board of each community college district, respectively, shall  
9 guarantee the repayment of bonds issued under this chapter by  
10 providing instructions to the Controller as follows:

11 (1) Informs the Controller of its election to participate in this  
12 act.

13 (2) Authorizes the Controller to pay the portion of the entity's  
14 annual allocation of funds from the California State Lottery  
15 Education Fund to the bond trustee identified by the entity for the  
16 repayment of the entity's share of the bonds issued under this  
17 chapter.

18 (3) Contains a transfer schedule that sets forth the amounts of  
19 funds, which shall be equal to the amount of funds pledged  
20 pursuant to subdivisions (a) and (b) of this section, to be  
21 transferred by the Controller to the trustee from the funds to be ~~to~~  
22 ~~be~~ allocated to the University of California, the California State  
23 University, or the community college district from the California  
24 State Lottery Education Fund.

25 SEC. 83. Section 88033 of the Education Code is amended to  
26 read:

27 88033. (a) Notwithstanding any other provisions of law, no  
28 minimum or maximum age limits shall be established for the  
29 employment or continuance in employment of persons as part of  
30 the classified service.

31 (b) Any person possessing all of the minimum qualifications  
32 for any employment shall be eligible for appointment to that  
33 employment, and no rule or policy, either written or unwritten,  
34 heretofore or hereafter adopted, shall prohibit the employment or  
35 continued employment, solely because of the age of any such  
36 person in any community college employment who is otherwise  
37 qualified therefor.

38 (c) No person shall be employed in community college  
39 employment while he or she is receiving a retirement allowance  
40 under any retirement system by reason of prior school or



community college employment, except as provided in Article 5 (commencing with Section 21150) of Chapter 8 of Part 3 of Division 5 of Title 2 of the Government Code.

(d) Subdivision (c) shall be inapplicable to persons who were employed in the classified service of any community college district as of September 18, 1959, and who are still ~~in the employ~~ *employed by* the same district on September 15, 1961, and the rights of those persons shall be fixed and determined as of September 18, 1959, and none of these persons shall be deprived of any right to any retirement allowance or eligibility for any such allowance to which he or she would have been entitled as of that date. Any such person who, by reason of any provision of law to the contrary, has been deprived of any right to retirement allowance or eligibility for such an allowance, shall, upon the filing of application therefor, be reinstated to those rights as he or she would have had, had this subdivision been in effect on September 18, 1959.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

SEC. 84. Section 89539.2 of the Education Code is amended to read:

89539.2. (a) Any party claiming that his or her request for discovery pursuant to Section 89539.1 has not been complied with may serve and file a petition to compel discovery with the Hearing Office of the State Personnel Board, naming as the respondent the party refusing or failing to comply with Section 89539.1. The petition shall state facts showing that the respondent ~~party~~ failed or refused to comply with Section 89539.1, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under Section 89539.1, and the ground or grounds of the respondent's refusal so far as known to the petitioner.

(b) (1) The petition shall be served upon ~~the~~ respondent ~~party~~, and filed within 14 days after the respondent ~~party~~ first evidenced his or her failure or refusal to comply with Section 89539.1, or within 30 days after the request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 15 days of the date set for commencement of the administrative hearing, except upon a

1 petition and a determination by the administrative law judge of  
2 good cause. In determining good cause, the administrative law  
3 judge shall consider the necessity and reasons for the discovery,  
4 the diligence or lack of diligence of the moving party, whether the  
5 granting of the petition will delay the commencement of the  
6 administrative hearing on the date set, and the possible prejudice  
7 of the action to any party.

8 (2) The respondent shall have a right to file a written answer to  
9 the petition. Any answer shall be filed with the Hearing Office of  
10 the State Personnel Board and the petitioner within 15 days of  
11 service of the petition.

12 (3) Unless otherwise stipulated by the parties and as provided  
13 by this section, the administrative law judge shall review the  
14 petition and any response filed by the respondent, and issue a  
15 decision granting or denying the petition within 20 days after the  
16 filing of the petition. Nothing in this section shall preclude the  
17 administrative law judge from determining that an evidentiary  
18 hearing shall be conducted prior to the issuance of a decision on  
19 the petition. In the event that a hearing is ordered, the decision of  
20 the administrative law judge shall be issued within 20 days of the  
21 closing of the hearing.

22 (4) A party aggrieved by the decision of the administrative law  
23 judge may, within 30 days of service of the decision, file a petition  
24 to compel discovery in the superior court for the county in which  
25 the administrative hearing will be held or in the county in which  
26 the headquarters of the trustees is located. The petition shall be  
27 served on the respondent-party.

28 (c) If, from a reading of the petition, the court is satisfied that  
29 the petition sets forth good cause for relief, the court shall issue an  
30 order to show cause directed to the respondent-party; otherwise the  
31 court shall enter an order denying the petition. The order to show  
32 cause shall be served upon the respondent and his or her attorney  
33 of record in the administrative proceeding by personal delivery or  
34 certified mail, and shall be returnable no earlier than 10 days from  
35 its issuance nor later than 30 days after the filing of the petition.  
36 The respondent party shall have the right to serve and file a written  
37 answer or other response to the petition and order to show cause.

38 (d) The court may, in its discretion, order the administrative  
39 proceeding stayed during the pendency of the proceeding, and, if

1 necessary, for a reasonable time thereafter to afford the parties time  
2 to comply with the court order.

3 (e) ~~Where~~ *If* the matter sought to be discovered is under the  
4 custody or control of the respondent ~~party~~ and the respondent ~~party~~  
5 asserts that the matter is not a discoverable matter under Section  
6 89539.1, or is privileged against disclosure under Section  
7 89539.1, the court may order lodged with it matters that are  
8 provided in subdivision (b) of Section 915 of the Evidence Code,  
9 and shall examine the matters in accordance with the provisions  
10 thereof.

11 (f) The court shall decide the case on the matters examined by  
12 the court in camera, the papers filed by the parties, and any oral  
13 argument and additional evidence as the court may allow.

14 (g) Unless otherwise stipulated by the parties, the court shall,  
15 no later than 45 days after the filing of the petition, file its order  
16 denying or granting the petition. However, the court may, on its  
17 own motion, for good cause, extend the time an additional 45 days.  
18 The order of the court shall be in writing, setting forth the matters  
19 or parts the petitioner is entitled to discover under Section  
20 89539.1. A copy of the order shall forthwith be served by mail by  
21 the clerk upon the parties. ~~Where~~ *If* the order grants the petition in  
22 whole or in part, the order shall not become effective until 10 days  
23 after the date the order is served by the clerk. ~~Where~~ *If* the order  
24 denies relief to the petitioning party, the order shall be effective on  
25 the date it is served by the clerk.

26 (h) (1) The order of the superior court shall be final and, except  
27 for this subdivision, shall not be subject to review by appeal. A  
28 party aggrieved by the order, or any part thereof, may within 30  
29 days after the service of the superior court's order serve and file in  
30 the district court of appeal for the district in which the superior  
31 court is located, a petition for a writ of mandamus to compel the  
32 superior court to set aside, or otherwise modify, its order.

33 (2) ~~Where~~ *If* a review is sought from an order granting  
34 discovery, the order of the trial court and the administrative  
35 proceeding shall be stayed upon the filing of the petition for writ  
36 of mandamus. However, the court of appeal may dissolve or  
37 modify the stay thereafter, if it is in the public interest to do so.  
38 ~~Where~~ *If* the review is sought from a denial of discovery, neither  
39 the trial court's order nor the administrative proceeding shall be

1 stayed by the court of appeal except upon a clear showing of  
2 probable error.

3 (i) ~~Where~~ *If* the superior court finds that a party or his or her  
4 attorney, without substantial justification, failed or refused to  
5 comply with Section 89539.1, or, without substantial justification,  
6 filed a petition to compel discovery pursuant to this section, or,  
7 without substantial justification, failed to comply with any order  
8 of court made pursuant to this section, the court may award court  
9 costs and reasonable ~~attorney~~ *attorney's* fees to the opposing party.  
10 Nothing in this subdivision shall limit the power of the superior  
11 court to compel obedience to its orders by contempt proceedings.

12 SEC. 85. Section 94779 of the Education Code is amended to  
13 read:

14 94779. The bureau shall make available to members of the  
15 public, upon request, the nature and disposition of all ~~complaints~~  
16 *complaints* on file with the bureau against an institution.

17 SEC. 86. Section 94901 of the Education Code is amended to  
18 read:

19 94901. (a) (1) Except as provided in Section 94905, the  
20 bureau shall conduct a qualitative review and assessment of the  
21 institution. It also shall conduct a qualitative review and  
22 assessment of all programs offered except continuing education  
23 programs and programs that are exclusively avocational or  
24 recreational in nature. The review shall include the items listed in  
25 subdivision (b) of Section 94900, through a comprehensive onsite  
26 review process, performed by a qualified visiting committee  
27 impaneled by the bureau for that purpose.

28 (2) An institution may include some or all of its separate  
29 operating sites under one application. Alternately, it may submit  
30 separate applications for any one site or combination of sites. The  
31 satellites or branches included in either an initial or renewal  
32 application shall be considered by the bureau to comprise a  
33 separate, single institution for purposes of regulation, approval,  
34 and compliance under this chapter.

35 (3) The application shall include a single fee based on the  
36 number of branches, satellites, and programs included within a  
37 single application in order to cover the costs involved for those  
38 multisite and multiprogram reviews. If the application is for  
39 renewal of an existing approval, the institution need only submit  
40 information necessary to document any changes made since the

1 time its previous application was filed with the bureau. Fees for  
2 renewal applications will be based on the actual costs involved in  
3 the administrative review process.

4 (b) The number of sites inspected by the bureau as part of its  
5 review process shall be subject to the following considerations:

6 (1) If the application for approval includes branches and  
7 satellites, the bureau shall inspect each branch and may inspect any  
8 satellite campus.

9 (2) If the application is for approval to operate a branch or a  
10 satellite, the bureau, in addition to inspecting the branch or  
11 satellite, also may inspect the institution operating the branch or  
12 satellite campus.

13 (c) The bureau may waive or modify the onsite inspection for  
14 institutions offering home study or correspondence courses. The  
15 visiting committee shall be impaneled by the bureau within 90  
16 days of the date of the receipt of a completed application, and shall  
17 be composed of educators, and other individuals with expertise in  
18 the areas listed in subdivision (b) of Section 94900, from  
19 degree-granting institutions legally operating within the state.  
20 Within 90 days of the receipt of the visiting committee's evaluation  
21 report and recommendations, or any reasonable extension of time  
22 not to exceed 90 days, the bureau shall take one of the following  
23 actions:

24 (1) If the institution is in compliance with this chapter, and has  
25 not operated within three years before the filing of the application  
26 in violation of this chapter then in effect, the bureau may grant an  
27 approval to operate not to exceed five years.

28 (2) If the institution is in compliance with this chapter, but has  
29 operated within three years before the filing of the application in  
30 violation of this chapter then in effect, or if the bureau determines  
31 that an unconditional grant of approval to operate is not in the  
32 public interest, the bureau may grant a conditional approval to  
33 operate subject to whatever restrictions the bureau deems  
34 appropriate. The bureau shall notify the institution of the  
35 restrictions or conditions, the basis for the restrictions or  
36 conditions, and the right to request a hearing to contest them.  
37 Conditional approval shall not exceed two years.

38 (3) The bureau may deny the application. If the application is  
39 denied, the bureau may permit the institution to continue offering  
40 the program of instruction to students already enrolled or may

1 order the institution to cease instruction and provide a refund of  
2 tuition and all other charges to students.

3 (d) When evaluating an institution whose purpose is to advance  
4 postsecondary education through innovative methods, the visiting  
5 committee shall comprise educators who are familiar with, and  
6 receptive to, evidence bearing on the educational quality and  
7 accomplishments of those methods.

8 (e) The standards and procedures utilized by the bureau shall  
9 not unreasonably hinder educational innovation and competition.

10 (f) Each institution or instructional program offering education  
11 for entry into a health care profession in which the provider has  
12 primary care responsibilities shall offer that education within a  
13 professional degree program that shall be subject to approval by  
14 the bureau pursuant to this section.

15 (g) (1) If an institution is not operating in California when it  
16 applies for approval to operate for itself or a branch or satellite  
17 campus, the institution shall file with its application an operational  
18 plan establishing that the institution will satisfy the minimum  
19 standards set forth in subdivision (a) of Section 94900. The  
20 operational plan also shall include a detailed description of the  
21 institution's program for implementing the operational plan,  
22 including proposed procedures, financial resources, and the  
23 qualifications of owners, directors, officers, and administrators  
24 employed at the time of the filing of the application. The bureau  
25 may request additional information to enable the bureau to  
26 determine whether the operational plan and its proposed  
27 implementation will satisfy these minimum standards.

28 (2) If the bureau determines that the operational plan satisfies  
29 the minimum standards described in subdivision (a) of Section  
30 94900, that the institution demonstrates that it will implement the  
31 plan, and that no ground for denial of the application exists, the  
32 bureau shall grant a temporary approval to operate, subject to any  
33 restrictions the bureau reasonably deems necessary to ensure  
34 compliance with this chapter, pending a qualitative review and  
35 assessment as provided in subdivisions (a) and (b) of Section  
36 94900. The bureau shall inspect, pursuant to subdivision (a) of  
37 ~~Section 94901~~ *this section*, the institution, or branch or satellite  
38 campus if approval is sought for that campus between 90 days and  
39 180 days after operation has begun under the temporary approval  
40 to operate. Following receipt of the visiting committee's or the



bureau staff's report, the bureau shall act as provided in paragraph (1), (2), or (3) of subdivision (c).

(h) If at any time the bureau determines that an institution has deviated from the standards for approval, the bureau, after identifying for the institution the areas in which it has deviated from the standards, and after giving the institution due notice and an opportunity to be heard, may place the institution on probation for a prescribed period of time, not to exceed 24 calendar months. During the period of probation, the institution shall be subject to special monitoring. The conditions for probation may include the required submission of periodic reports, as prescribed by the bureau, and special visits by authorized representatives of the bureau to determine progress toward total compliance. If, at the end of the probationary period, the institution has not taken steps to eliminate the cause or causes for its probation to the satisfaction of the bureau, the bureau may revoke the institution's approval to award degrees and provide notice to the institution to cease its operations.

(i) An institution may not advertise itself as an approved institution unless each degree program offered by the institution has been approved in accordance with the requirements of this section. The bureau shall review all operations of the institution; pertaining to California degrees, both within and outside of California. The bureau may conduct site visits outside of California, including the institution's foreign operations, when the bureau deems these visits to be necessary. The institution shall be responsible for the expenses of the visiting team members including the bureau's staff liaison. The bureau may authorize any institution approved to issue degrees under this section to issue certificates for the completion of courses of study that are within the institution's approved degree-granting programs.

(j) An institution shall not offer any educational program or degree title that was not offered by the institution at the time the institution applied for approval to operate, and shall not offer any educational program or degree title at a campus that had not offered the program or degree title at the time the institution applied for approval to operate that campus, unless the bureau first approves the offering of the program or degree title after determining that it satisfies the minimum standards established by this section.

SEC. 87. Section 94944 of the Education Code is amended to read:

94944. (a) The Student Tuition Recovery Fund is continued in existence. All assessments collected pursuant to Section 94945 shall be credited to this fund, along with any interest on the ~~money~~ *moneys*, for the administration of this article. Notwithstanding Section 13340 of the Government Code, the ~~money~~ *moneys* in the fund ~~is~~ *are* continuously appropriated to the bureau without regard to fiscal years for the purposes of this chapter. The fund shall consist of a degree-granting postsecondary educational institution account, a vocational educational institution account, and an account for institutions approved under any provision of this chapter that charge each enrolled student a total charge, as defined in subdivision (k) of Section 94852, of less than one thousand dollars (\$1,000), for the purpose of relieving or mitigating pecuniary losses suffered by any California resident who is a student of an approved institution and who meets either of the following conditions:

(1) (A) The student was enrolled in an institution, prepaid tuition, and suffered loss as a result of any of the following:

- (i) The closure of the institution.
  - (ii) The institution's failure to pay refunds or charges on behalf of a student to a third party for license fees or any other purposes, or to provide equipment or materials for which a charge was collected within 180 days before the closure of the institution.
  - (iii) The institution's failure to pay or reimburse loan proceeds under a federally guaranteed student loan program as required by law or to pay or reimburse proceeds received by the institution prior to closure in excess of tuition and other costs.
  - (iv) The institution's breach or anticipatory breach of the agreement for the course of instruction.
  - (v) A decline in the quality or value of the course of instruction within the 30-day period before the closure of the institution or, if the decline began before that period, the period of decline determined by the bureau.
  - (vi) The commission of a fraud by the institution during the solicitation or enrollment of, or during the program participation of, the student.
- (B) For the purposes of this section, "closure" includes closure of a branch or satellite campus, the termination of either the

1 correspondence or residence portion of a home study or  
2 correspondence course, and the termination of a course of  
3 instruction for some or all of the students enrolled in the course  
4 before the time these students were originally scheduled to  
5 complete it, or before a student who has been continuously  
6 enrolled in a course of instruction has been permitted to complete  
7 all the educational services and classes that comprise the course.

8 (2) The student obtained a judgment against the institution for  
9 any violation of this chapter, and the student certifies that the  
10 judgment cannot be collected after diligent collection efforts. A  
11 court judgment obtained under this paragraph shall be paid in  
12 accordance with paragraph (1) of subdivision (f), unless the  
13 judgment indicates that a lesser amount is due.

14 (b) Payments from the fund to any student shall be made from  
15 the appropriate account within the fund, as determined by the type  
16 of institution into which the student has paid his or her fees, and  
17 shall be subject to any regulations and conditions prescribed by the  
18 bureau.

19 (c) (1) (A) The institution shall provide to the bureau, at the  
20 time of the institution's closure, the names and addresses of  
21 persons who were students of an institution within 60 days prior  
22 to its closure, and shall notify these students, within 30 days of the  
23 institution's closure, of their rights under the fund and how to  
24 apply for payment. If the institution fails to comply with this  
25 subdivision, the bureau shall attempt to obtain the names and  
26 addresses of these students and shall notify them, within 90 days  
27 of the institution's closure, of their rights under the fund and how  
28 to apply for payment. This notice shall include the explanation and  
29 the claim form described in subparagraph (B).

30 (B) The bureau shall develop a form in English and Spanish  
31 fully explaining a student's rights, which shall be used by the  
32 institution or the bureau to comply with the requirements of  
33 subparagraph (A). The form shall include, or be accompanied by,  
34 a claim application and an explanation of how to complete the  
35 application.

36 (2) (A) If an institution fails to comply with paragraph (1), the  
37 bureau shall order the institution, or any person responsible for the  
38 failure to provide notice as required by paragraph (1), to reimburse  
39 the bureau for all reasonable costs and expenses incurred in  
40 notifying students as required in paragraph (1). In addition, the

1 bureau may impose a penalty of up to five thousand dollars  
2 (\$5,000) against the institution and any person found responsible  
3 for the failure to provide notice. The amount of the penalty shall  
4 be based on the degree of culpability and the ability to pay. Any  
5 order may impose joint and several liability. Before any order is  
6 made pursuant to this paragraph, the bureau shall provide written  
7 notice to the institution and any person from whom the bureau  
8 seeks recovery of the bureau's claim and of the right to request a  
9 hearing within 30 days of the service of the notice.

10 (B) If a hearing is not requested within 30 days of service of the  
11 notice, the bureau may order payment in the amount of the claim.  
12 If a hearing is requested, Chapter 5 (commencing with Section  
13 11500) of Part 1 of Division 3 of Title 2 of the Government Code  
14 shall apply, and the bureau shall have all of the powers therein  
15 prescribed. Within 30 days after the effective date of the issuance  
16 of an order, the bureau may enforce the order in the same manner  
17 as if it were a money judgment pursuant to Title 9 (commencing  
18 with Section 680.010) of Part 2 of the Code of Civil Procedure. All  
19 penalties and reimbursements paid pursuant to this section shall be  
20 deposited in the Private Postsecondary and Vocational Education  
21 Administration Fund established pursuant to Section 94932 or any  
22 successor fund.

23 (d) (1) Students entitled to payment as provided in paragraph  
24 (1) of subdivision (a) shall file with the bureau a verified  
25 application indicating each of the following:

26 (A) The student's name, address, telephone number, and social  
27 security number.

28 (B) If any portion of the tuition was paid from the proceeds of  
29 a loan, the name of the lender, and any state or federal agency that  
30 guaranteed or reinsured the loan.

31 (C) The amount of the paid tuition, the amount and description  
32 of the student's loss, and the amount of the student's claim.

33 (D) The date the student started and ceased attending the  
34 institution.

35 (E) A description of the reasons the student ceased attending  
36 the institution.

37 (F) If the student ceased attending because of a breach or  
38 anticipatory breach or because of the decline in the quality or value  
39 of the course of instruction as described in clause (v) of  
40 subparagraph (A) of paragraph (1) of subdivision (a), a statement



describing in detail the nature of the loss incurred. The application shall be filed within one year from the date of the notice, as described in paragraph (1) of subdivision (c). If no notice is received by the student from the bureau soon after the school closes, the application shall be filed within four years of the institution's closure, or within two years of the student's or former student's receipt of an explanation of his or her rights and a claim form, whichever of those claim periods expires later. The two-year claim period shall begin on the day the student or former student receives from the bureau both an explanation regarding how to file a claim and a claim application, as provided in subparagraph (B) of paragraph (1) of subdivision (c), or on the day the second of the two documents is received, if they are received on different dates. If the claimant's primary language is Spanish, the notice and explanation shall be sent in Spanish.

(G) Nothing in this subdivision shall preclude the filing of a single, unified application that aggregates the claims of similarly situated students.

(2) (A) Students entitled to payment as provided in paragraph (2) of subdivision (a) shall file with the bureau a verified application indicating the student's name, address, telephone number, and social security number, the amount of the judgment obtained against the institution, a statement that the judgment cannot be collected, and a description of the efforts attempted to enforce the judgment. The application shall be accompanied by a copy of the judgment and any other documents indicating the student's efforts made to enforce the judgment.

(B) The application shall be filed within two years after the date upon which the judgment became final.

(3) The bureau may require additional information designed to facilitate payment to entitled students. The bureau shall waive the requirement that a student provide all of the information required by this subdivision if the bureau has the information or the information is not reasonably necessary for the resolution of a student's claim.

(4) Nothing in this subdivision shall be construed to preclude the filing of a single, unified application that aggregates the claims of similarly situated students.

(e) Within 60 days of the bureau's receipt of a completed application for payment, the bureau shall pay the claim from the

1 Student Tuition Recovery Fund or deny the claim. The bureau, for  
2 good cause, may extend the time period for up to an additional 90  
3 days to investigate the accuracy of the claim.

4 (f) (1) If the bureau pays the claim, the amount of the payment  
5 shall be (A) the greater of either (i) the total guaranteed student  
6 loan debt incurred by the student in connection with attending the  
7 institution, or (ii) the total of the student's tuition and the cost of  
8 equipment and materials related to the course of instruction, less  
9 (B) the amount of any refund, reimbursement, indemnification,  
10 restitution, compensatory damages, settlement, debt forgiveness,  
11 discharge, cancellation, or compromise, or any other benefit  
12 received by, or on behalf of, the student before the bureau's  
13 payment of the claim in connection with the student loan debt or  
14 cost of tuition, equipment, and materials. The payment also shall  
15 include the amount the institution collected and failed to pay to  
16 third parties on behalf of the student for license fees or any other  
17 purpose. However, if the claim is based solely on the  
18 circumstances described in subparagraph (B) or (C) of paragraph  
19 (1) of subdivision (a), the amount of the payment shall be the  
20 amount of the loss suffered by the student. In addition to the  
21 amount determined under this paragraph, the amount of the  
22 payment shall include all interest and collection costs on all student  
23 loan debt incurred by the student in connection with attending the  
24 institution.

25 (2) The bureau may reduce the total amount specified in  
26 paragraph (1) by the value of the benefit, if any, of the education  
27 obtained by the student before the closure of the institution. If the  
28 bureau makes any reduction pursuant to this paragraph, the bureau  
29 shall notify the claimant in writing, at the time the claim is paid,  
30 of the basis of its decision and provide a brief explanation of the  
31 reasons upon which the bureau relied in computing the amount of  
32 the reduction.

33 (3) No reduction shall be made to the amount specified in  
34 paragraph (1) if (A) the student did not receive adequate  
35 instruction to obtain the training, skills, or experience, or  
36 employment to which the instruction was represented to lead, (B)  
37 credit for the instruction obtained by the student is not generally  
38 transferable to other institutions approved by the bureau, or (C) the  
39 institution or one of its representatives fraudulently



1 misrepresented to students the likely starting salary or job  
2 availability, or both, after training.

3 (4) The amount of the payment determined under this  
4 subdivision is not dependent on the amount of the refund to which  
5 the student would have been entitled after a voluntary withdrawal.

6 (5) Upon payment of the claim, all of the student's rights  
7 against the institution shall be deemed assigned to the bureau to the  
8 extent of the amount of the payment.

9 (g) (1) The bureau shall negotiate with a lender, holder,  
10 guarantee agency, or the United States Department of Education  
11 for the full compromise or writeoff of student loan obligations to  
12 relieve students of loss and thereby reduce the amount of student  
13 claims.

14 (2) The bureau, with the student's permission, may pay a  
15 student's claim directly to the lender, holder, guarantee agency, or  
16 the United States Department of Education under a federally  
17 guaranteed student loan program only if the payment of the claim  
18 fully satisfies all of the student's loan obligations related to  
19 attendance at the institution for which the claim was filed.

20 (3) Notwithstanding subdivision (e), the bureau may delay the  
21 payment of a claim pending the resolution of the bureau's attempt  
22 to obtain a compromise or writeoff of the claimant's student loan  
23 obligation. However, the bureau shall immediately pay the claim  
24 if any adverse action that is not stayed is taken against the claimant,  
25 including the commencement of a civil or administrative action,  
26 tax offset, the enforcement of a judgment, or the denial of any  
27 government benefit.

28 (4) The bureau shall make every reasonable effort to obtain a  
29 loan discharge for an eligible student in lieu of reimbursing that  
30 student in whole or in part from the fund pursuant to federal  
31 student loan laws and regulations.

32 (5) Whenever the bureau receives from a student a completed  
33 application for payment from the Student Tuition Recovery Fund,  
34 the bureau shall, as soon as is practicable, cause to be delivered to  
35 that student a written notice specifying, in plain English, the rights  
36 of a student under this section.

37 (h) (1) If the bureau denies the claim, or reduces the amount  
38 of the claim pursuant to paragraph (2) of subdivision (f), the  
39 bureau shall notify the student of the denial or reduction and of the  
40 student's right to request a hearing within 60 days or any longer



1 period permitted by the bureau. If a hearing is not requested within  
2 60 days or any additional period reasonably requested by the  
3 student, the bureau's decision shall be final. If a hearing is  
4 requested, Chapter 5 (commencing with Section 11500) of Part 1  
5 of Division 3 of Title 2 of the Government Code shall apply.

6 (2) It is the intent of the Legislature that, when a student is  
7 enrolled in an institution that closes prior to the completion of the  
8 student's program, the student shall have the option for a teach-out  
9 at another institution approved by the bureau. The bureau shall  
10 seek to promote teach-out opportunities wherever possible and  
11 shall inform the student of his or her rights, including payment  
12 from the fund, transfer opportunities, and available teach-out  
13 opportunities, if any.

14 (i) This section applies to all claims filed or pending under  
15 former Chapter 7 (commencing with Section 94700) after January  
16 1, 1990.

17 (j) Once the bureau has determined that a student claim is  
18 eligible for payment under this section and intends to use the  
19 Student Tuition Recovery Fund, in whole or in part, to satisfy the  
20 eligible claim, the bureau shall document its negotiations with the  
21 relevant lender, holder or guarantee agency, the United States  
22 Department of Education, or the applicable state agency. The  
23 bureau shall prepare a written summary of the parties and results  
24 of the negotiations, including the amounts offered and accepted,  
25 the discounts requested and granted, and any other information  
26 that is available to any party that files a request for this information  
27 with the bureau.

28 SEC. 88. Section 94990 of the Education Code is amended to  
29 read:

30 94990. The bureau is subject to the sunset review process  
31 conducted by the Joint Legislative Sunset Review Committee  
32 pursuant to ~~Division 1.2 Chapter 1~~ (commencing with Section  
33 473) of *Division 1.2 of the Business and Professions Code*.  
34 Notwithstanding that this chapter does not specify that it will  
35 become inoperative on a specified date, the analyses, reports,  
36 public hearings, evaluations, and determinations required to be  
37 prepared, conducted, and made pursuant to ~~Division 1.2 Chapter~~  
38 *1* (commencing with Section 473) of *Division 1.2 of the Business*  
39 *and Professions Code* shall be prepared, conducted, and made in

1 2002 and every four years thereafter as long as this chapter is  
2 operative.

3 SEC. 89. Section 99235 of the Education Code is amended to  
4 read:

5 99235. (a) The Superintendent of Public Instruction shall  
6 notify local educational agencies that they are eligible to receive  
7 funding to provide instructional aides and paraprofessionals who  
8 directly assist with classroom instruction in mathematics and  
9 reading with professional development training in mathematics  
10 and reading, in an amount equal to one thousand dollars (\$1,000)  
11 per qualifying instructional aide. Funding will be provided to local  
12 educational agencies on a first-come, ~~first-serve~~ *first-served* basis.  
13 A local educational agency that chooses to participate in the  
14 program is eligible to receive funding for no greater than the  
15 percentage calculated in accordance with provisions of an item of  
16 appropriation in the annual Budget Act for its instructional aides  
17 and paraprofessionals. However, the statewide total number of  
18 instructional aides and paraprofessionals who directly assist with  
19 classroom instruction in mathematics and reading served under  
20 this program may not exceed 9,600 over the two fiscal years.

21 (b) Of the incentive provided pursuant to subdivision (a), a  
22 local educational agency may use not more than five hundred  
23 dollars (\$500) of the per instructional aide and ~~paraprofessionals~~  
24 *paraprofessional*, who directly assist with classroom instruction in  
25 mathematics and reading, amount to provide an individual  
26 instructional aid stipend.

27 SEC. 90. Section 11105 of the Elections Code is amended to  
28 read:

29 11105. Upon each submission, if ~~less~~ *fewer* than 500  
30 signatures are submitted to the elections official, he or she shall  
31 count the number of signatures and submit those results to the  
32 Secretary of State. If 500 ~~or~~ *or* more signatures are submitted, the  
33 elections official may verify, using a random sampling technique,  
34 either 3 percent of the signatures submitted, or 500, whichever is  
35 less. The random sample of signatures to be verified shall be drawn  
36 in such a manner that every signature filed with the elections  
37 official shall be given an equal opportunity to be included in the  
38 sample. Upon completion of the signature verification, the  
39 elections official shall report the results to the Secretary of State  
40 pursuant to Section 11104.

1 SEC. 91. Section 14310 of the Elections Code is amended to  
2 read:

3 14310. (a) At all elections, a voter claiming to be properly  
4 registered but whose qualification or entitlement to vote cannot be  
5 immediately established upon examination of the index of  
6 registration for the precinct or upon examination of the records on  
7 file with the county elections official, shall be entitled to vote a  
8 provisional ballot as follows:

9 (1) An election official shall advise the voter of the voter's right  
10 to cast a provisional ballot.

11 (2) The voter shall be provided a provisional ballot, written  
12 instructions regarding the process and procedures for casting the  
13 provisional ballot, and a written affirmation regarding the voter's  
14 registration and eligibility to vote. The written instructions shall  
15 include the information set forth in subdivisions (c) and (d).

16 (3) The voter shall be required to execute, in the presence of an  
17 elections official, the written affirmation stating that the voter is  
18 eligible to vote and registered in the county where the voter desires  
19 to vote.

20 (b) Once voted, the voter's ballot shall be sealed in a  
21 provisional ballot envelope, and the ballot in its envelope shall be  
22 deposited in the ballot box. All provisional ballots voted shall  
23 remain sealed in their envelopes for return to the elections official  
24 in accordance with the elections official's instructions. The  
25 provisional ballot envelopes specified in this subdivision shall be  
26 a color different than the color of, but printed substantially similar  
27 to, the envelopes used for absentee ballots, and shall be completed  
28 in the same manner as absentee envelopes.

29 (c) (1) During the official canvass, the elections official shall  
30 examine the records with respect to all provisional ballots cast.  
31 Using the procedures that apply to the comparison of signatures on  
32 absentee ballots, the elections official shall compare the signature  
33 on each provisional ballot envelope with the signature on the  
34 voter's affidavit of registration. If the signatures do not compare,  
35 the ballot shall be rejected. A variation of the signature caused by  
36 the substitution of initials for the first or middle name, or both,  
37 shall not invalidate the ballot.

38 (2) Provisional ballots shall not be included in any semiofficial  
39 or official canvass, except upon: (A) the elections official's  
40 establishing prior to the completion of the official canvass, from



1 the records in his or her office, the claimant's right to vote; or (B)  
2 the order of a superior court in the county of the voter's residence.  
3 A voter may seek the court order specified in this paragraph  
4 regarding his or her own ballot at any time prior to completion of  
5 the official canvass. Any judicial action or appeal shall have  
6 priority over all other civil matters.

7 (3) The provisional ballot of a voter who is otherwise entitled  
8 to vote shall not be rejected because the voter did not cast his or  
9 her ballot in the precinct to which he or she was assigned by the  
10 elections official.

11 (A) If the ballot cast by the voter contains the same candidates  
12 and measures on which the voter would have been entitled to vote  
13 in his or her assigned precinct, the elections official shall count the  
14 votes for the entire ballot.

15 (B) If the ballot cast by the voter contains candidates or  
16 measures on which the voter would not have been entitled to vote  
17 in his or *her* assigned precinct, the elections official shall count  
18 only the votes for the candidates and measures on which the voter  
19 was entitled to vote in his or her assigned precinct.

20 (d) The Secretary of State shall establish a free access system  
21 that any voter who casts a provisional ballot may access to discover  
22 whether the voter's provisional ballot was counted and, if not, the  
23 reason why it was not counted.

24 (e) The Secretary of State may adopt appropriate regulations  
25 for purposes of ensuring the uniform application of this section.

26 (f) This section shall apply to any absent voter described by  
27 Section 3015 who is unable to surrender his or her unvoted absent  
28 voter's ballot.

29 (g) Any existing supply of envelopes marked "special  
30 challenged ballot" may be used until the supply is exhausted.

31 SEC. 92. Section 18541 of the Elections Code is amended to  
32 read:

33 18541. (a) No person shall, with the intent of dissuading  
34 another person from voting, within 100 feet of a polling place, *do*  
35 *any of the following*:

36 (1) Solicit a vote or speak to a voter on the subject of marking  
37 his or her ballot.

38 (2) Place a sign relating to voters' qualifications or speak to a  
39 voter on the subject of his or her qualifications except as provided  
40 in Section 14240.

(3) Photograph, videotape, or otherwise record a voter entering or exiting a polling place.

(b) Any ~~person who violates~~ *violation of* this section is punishable by imprisonment in ~~the a~~ county jail for not more than 12 months, or in the state prison. Any person who conspires to violate this section is guilty of a felony.

(c) For purposes of this section, 100 feet means a distance of 100 feet from the room or rooms in which voters are signing the roster and casting ballots.

SEC. 93. Section 917 of the Evidence Code is amended to read:

917. (a) Whenever a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client, physician-patient, psychotherapist-patient, ~~clergyman-penitent~~ *clergy-penitent*, husband-wife, sexual assault victim-counselor, or domestic violence victim-counselor relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential.

(b) A communication between persons in a relationship listed in subdivision (a) does not lose its privileged character for the sole reason that it is communicated by electronic means or because persons involved in the delivery, facilitation, or storage of electronic communication may have access to the content of the communication.

(c) For purposes of this section, “electronic” has the same meaning provided in Section 1633.2 of the Civil Code.

SEC. 94. Section 956.5 of the Evidence Code, as amended by Chapter 765 of the Statutes of 2003, is amended to read:

956.5. There is no privilege under this article if the lawyer reasonably believes that disclosure of any confidential communication relating to representation of a client is necessary to prevent a criminal act that the lawyer reasonably believes is likely to result in *the* death of, or substantial bodily harm to, an individual.

SEC. 95. Section 4962 of the Family Code is amended to read:

4962. (a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of

1 this state has jurisdiction to enforce and to modify the issuing  
2 state's child support order in a proceeding to register that order.

3 (b) A tribunal of this state exercising jurisdiction under this  
4 section shall apply the provisions of Articles 1 (commencing with  
5 Section 4900) and 2 (commencing with Section 4905), this article,  
6 and the procedural and substantive law of this state to the  
7 proceeding for enforcement or modification. Articles 3  
8 (commencing with Section 4915) ~~through~~ to 5 (commencing with  
9 Section 4940), inclusive, and Articles 7 (commencing with  
10 Section 4965) ~~and~~ and 8 (commencing with Section 4970) do not  
11 apply.

12 SEC. 96. Section 17600 of the Family Code is amended to  
13 read:

14 17600. (a) The Legislature finds and declares all of the  
15 following:

16 (1) The Legislative Analyst has found that county child support  
17 enforcement programs provide a net increase in revenues to the  
18 state.

19 (2) The state has a fiscal interest in ensuring that county child  
20 support enforcement programs perform efficiently.

21 (3) The state does not provide information to counties on child  
22 support enforcement programs, based on common denominators  
23 that would facilitate comparison of program performance.

24 (4) Providing this information would allow county officials to  
25 monitor program performance and to make appropriate  
26 modifications to improve program efficiency.

27 (5) This information is required for effective management of  
28 the child support program.

29 (b) Except as provided in this subdivision commencing with  
30 the 1998–99 fiscal year, and for each fiscal year thereafter, each  
31 county that is participating in the state incentive program  
32 described in Section 17704 shall provide to the department, and  
33 the department shall compile from this county child support  
34 information, monthly and annually, all of the following  
35 performance-based data, as established by the federal incentive  
36 funding system, provided that the department may revise the data  
37 required by this paragraph in order to conform to the final federal  
38 incentive system data definitions:

39 (1) One of the following data relating to paternity  
40 establishment, as required by the department, provided that the

1 department shall require all counties to report on the same  
2 measurement:

3 (A) The total number of children in the caseload governed by  
4 Part D (commencing with Section 451) of Title IV of the federal  
5 Social Security Act (42 U.S.C. Sec. 651 et seq.), as of the end of  
6 the federal fiscal year, who were born to unmarried parents for  
7 whom paternity was established or acknowledged, and the total  
8 number of children in that caseload, as of the end of the preceding  
9 federal fiscal year, who were born to unmarried parents.

10 (B) The total number of minor children who were born in the  
11 state to unmarried parents for whom paternity was established or  
12 acknowledged during a federal fiscal year, and the total number of  
13 children in the state born to unmarried parents during the  
14 preceding calendar year.

15 (2) The number of cases governed by Part D (commencing with  
16 Section 451) of Title IV of the federal Social Security Act (42  
17 U.S.C. Sec. 651 et seq.) during the federal fiscal year and the total  
18 number of those cases with support orders.

19 (3) The total dollars collected during the federal fiscal year for  
20 current support in cases governed by Part D (commencing with  
21 Section 451) of Title IV of the federal Social Security Act (42  
22 U.S.C. Sec. 651 et seq.) and the total number of dollars owing for  
23 current support during that federal fiscal year in cases governed by  
24 those provisions.

25 (4) The total number of cases for the federal fiscal year  
26 governed by Part D (commencing with Section 451) of Title IV of  
27 the federal Social Security Act (42 U.S.C. Sec. 651 et seq.) in  
28 which payment was being made toward child support arrearages  
29 and the total number of cases for that fiscal year governed by these  
30 federal provisions that had child support arrearages.

31 (5) The total number of dollars collected and expended during  
32 a federal fiscal year in cases governed by Part D (commencing  
33 with Section 451) of Title IV of the federal Social Security Act (42  
34 U.S.C. Sec. 651 et seq.).

35 (6) The total amount of child support dollars collected during  
36 a federal fiscal year, and, if and when required by federal law, the  
37 amount of these collections broken down by collections  
38 distributed on behalf of current recipients of federal Temporary  
39 Assistance for Needy Families block grant funds or federal foster  
40 care funds, on behalf of former recipients of federal Temporary





1 Assistance for Needy Families block grant funds or federal foster  
2 care funds, or on behalf of persons who have never been recipients  
3 of these federal funds.

4 (c) In addition to the information required by subdivision (b),  
5 the department shall collect, on a monthly basis, from each county  
6 that is participating in the state incentive program described in  
7 Section 17704, information on the local child support agency for  
8 each federal fiscal year, and shall report semiannually on all of the  
9 following performance measurements:

10 (1) The percentage of cases with collections of current support.  
11 This percentage shall be calculated by dividing the number of  
12 cases with an order for current support by the number of those  
13 cases with collections of current support. The number of cases with  
14 support collected shall include only the number of cases actually  
15 receiving a collection, not the number of payments received. Cases  
16 with a medical support order that do not have an order for current  
17 support may not be counted.

18 (2) The average amount collected per case for all cases with  
19 collections.

20 (3) The percentage of cases that had a support order established  
21 during the period. A support order shall be counted as established  
22 only when the appropriate court has issued an order for child  
23 support, including an order for temporary child support, or an  
24 order for medical support.

25 (4) The total cost of administering the local child support  
26 agency, including the federal, state, and county share of the costs,  
27 and the federal and state incentives received by each county. The  
28 total cost of administering the program shall be broken down by  
29 the following:

30 (A) The direct costs of the program, broken down further by  
31 total employee salaries and benefits, a list of the number of  
32 employees broken down into at least the following categories:  
33 attorneys, administrators, caseworkers, investigators, and clerical  
34 support; contractor costs; space charges; and payments to other  
35 county agencies. Employee salaries and numbers need only be  
36 reported in the annual report.

37 (B) The indirect costs, showing all overhead charges.

38 (5) In addition, the local child support agency shall report  
39 monthly on measurements developed by the department that  
40 provide data on the following:

1 (A) Locating obligors.

2 (B) Obtaining and enforcing medical support.

3 (C) Providing customer service.

4 (D) Any other measurements that the director determines to be  
5 an appropriate determination of a local child support agency's  
6 performance.

7 (6) A county may apply for an exemption from any or all of the  
8 reporting requirements of this subdivision for a fiscal year by  
9 submitting an application for the exemption to the department at  
10 least three months prior to the commencement of the fiscal year or  
11 quarter for which the exemption is sought. A county shall provide  
12 a separate justification for each data element under this  
13 subdivision for which the county is seeking an exemption and the  
14 cost to the county of providing the data. The department may not  
15 grant an exemption for more than one year. The department may  
16 grant a single exemption only if both of the following conditions  
17 are met:

18 (A) The county cannot compile the data being sought through  
19 its existing automated system or systems.

20 (B) The county cannot compile the data being sought through  
21 manual means or through an enhanced automated system or  
22 systems without significantly harming the child support collection  
23 efforts of the county.

24 (d) After implementation of the statewide automated system, in  
25 addition to the information required by subdivision (b), the  
26 Department of Child Support Services shall collect, on a monthly  
27 basis, from each county that is participating in the state incentive  
28 program described in Section 17704, information on the county  
29 child support enforcement program beginning with the 1998–99  
30 fiscal year or a later fiscal year, as appropriate, and for each  
31 subsequent fiscal year, and shall report semiannually on all of the  
32 following measurements:

33 (1) For each of the following support collection categories, the  
34 number of cases with support collected shall include only the  
35 number of cases actually receiving a collection, not the number of  
36 payments received.

37 (A) (i) The number of cases with collections for current  
38 support.

39 (ii) The number of cases with arrears collections only.

1 (iii) The number of cases with both current support and arrears  
2 collections.

3 (B) For cases with current support only due:

4 (i) The number of cases in which the full amount of current  
5 support owed was collected.

6 (ii) The number of cases in which some amount of current  
7 support, but less than the full amount of support owed, was  
8 collected.

9 (iii) The number of cases in which no amount of support owed  
10 was collected.

11 (C) For cases in which arrears only were owed:

12 (i) The number of cases in which all arrears owed were  
13 collected.

14 (ii) The number of cases in which some amount of arrears, but  
15 less than the full amount of arrears owed, were collected.

16 (iii) The number of cases in which no amount of arrears owed  
17 were collected.

18 (D) For cases in which both current support and arrears are  
19 owed:

20 (i) The number of cases in which the full amount of current  
21 support and arrears owed were collected.

22 (ii) The number of cases in which some amount of current  
23 support and arrears, but less than the full amount of support owed,  
24 were collected.

25 (iii) The number of cases in which no amount of support owed  
26 was collected.

27 (E) The total number of cases in which an amount was due for  
28 current support only.

29 (F) The total number of cases in which an amount was due for  
30 both current support and arrears.

31 (G) The total number of cases in which an amount was due for  
32 arrears only.

33 (H) For cases with current support due, the number of cases  
34 without orders for medical support and the number of cases with  
35 an order for medical support.

36 (2) The number of alleged fathers or obligors who were served  
37 with a summons and complaint to establish paternity or a support  
38 order, and the number of alleged fathers or obligors for whom it  
39 is required that paternity or a support order be established. In order  
40 to be counted under this paragraph, the alleged father or obligor

1 shall be successfully served with process. An alleged father shall  
2 be counted under this paragraph only once if he is served with  
3 process simultaneously for both a paternity and a support order  
4 proceeding for the same child or children. For purposes of this  
5 paragraph, a support order shall include a medical support order.

6 (3) The number of new asset seizures or successful initial  
7 collections on a wage assignment for purposes of child support  
8 collection. For purposes of this paragraph, a collection made on a  
9 wage assignment shall be counted only once for each wage  
10 assignment issued.

11 (4) The number of children requiring paternity establishment  
12 and the number of children for whom paternity has been  
13 established during the period. Paternity may only be established  
14 once for each child. Any child for whom paternity is not at issue  
15 shall not be counted in the number of children for whom paternity  
16 has been established. For this purpose, paternity is not at issue if  
17 the parents were married and neither parent challenges paternity  
18 or a voluntary paternity declaration has been executed by the  
19 parents prior to the local child support agency obtaining the case  
20 and neither parent challenges paternity.

21 (5) The number of cases requiring that a support order be  
22 established and the number of cases that had a support order  
23 established during the period. A support order shall be counted as  
24 established only when the appropriate court has issued an order for  
25 child support, including an order for temporary child support, or  
26 an order for medical support.

27 (6) The total cost of administering the local child support  
28 agency, including the federal, state, and county share of the costs  
29 and the federal and state incentives received by each county. The  
30 total cost of administering the program shall be broken down by  
31 the following:

32 (A) The direct costs of the program, broken down further by  
33 total employee salaries and benefits, a list of the number of  
34 employees broken down into at least the following categories:  
35 attorneys, administrators, caseworkers, investigators, and clerical  
36 support; contractor costs; space charges; and payments to other  
37 county agencies. Employee salaries and numbers need only be  
38 reported in the annual report.

39 (B) The indirect costs, showing all overhead charges.

1 (7) The total child support collections due, broken down by  
2 current support, interest on arrears, and principal, and the total  
3 child support collections that have been collected, broken down by  
4 current support, interest on arrears, and principal.

5 (8) The actual case status for all cases in the county child  
6 support enforcement program. Each case shall be reported in one  
7 case status only. If a case falls within more than one status  
8 category, it shall be counted in the first status category of the list  
9 set forth below in which it qualifies. The following shall be the  
10 case status choices:

11 (A) No support order, location of obligor parent required.

12 (B) No support order, alleged obligor parent located and  
13 paternity required.

14 (C) No support order, location and paternity not at issue but  
15 support order must be established.

16 (D) Support order established with current support obligation  
17 and obligor is in compliance with support obligation.

18 (E) Support order established with current support obligation,  
19 obligor is in arrears, and location of obligor is necessary.

20 (F) Support order established with current support obligation,  
21 obligor is in arrears, and location of obligor's assets is necessary.

22 (G) Support order established with current support obligation,  
23 obligor is in arrears, and no location of obligor or obligor's assets  
24 is necessary.

25 (H) Support order established with current support obligation,  
26 obligor is in arrears, the obligor is located, but the local child  
27 support agency has established satisfactorily that the obligor has  
28 no income or assets and no ability to earn.

29 (I) Support order established with current support obligation  
30 and arrears, obligor is paying the current support and is paying  
31 some or all of the interest on the arrears, but is paying no principal.

32 (J) Support order established for arrears only and obligor is  
33 current in repayment obligation.

34 (K) Support order established for arrears only, obligor is not  
35 current in arrears repayment schedule, and location of obligor is  
36 required.

37 (L) Support order established for arrears only, obligor is not  
38 current in arrears repayment schedule, and location of obligor's  
39 assets is required.

1 (M) Support order established for arrears only, obligor is not  
2 current in arrears repayment schedule, and no location of obligor  
3 or obligor's assets is required.

4 (N) Support order established for arrears only, obligor is not  
5 current in arrears repayment, and the obligor is located, but the  
6 local child support agency has established satisfactorily that the  
7 obligor has no income or assets and no ability to earn.

8 (O) Support order established for arrears only and obligor is  
9 repaying some or all of the interest, but no principal.

10 (P) Other, if necessary, to be defined in the regulations  
11 promulgated under subdivision (e).

12 (e) Upon implementation of the statewide automated system,  
13 or at the time that the department determines that compliance with  
14 this subdivision is possible, whichever is earlier, each county that  
15 is participating in the state incentive program described in Section  
16 17704 shall collect and report, and the department shall compile  
17 for each participating county, information on the county child  
18 support program in each fiscal year, all of the following data, in a  
19 manner that facilitates comparison of counties and the entire state,  
20 except that the department may eliminate or modify the  
21 requirement to report any data mandated to be reported pursuant  
22 to this subdivision if the department determines that the local child  
23 support agencies are unable to accurately collect and report the  
24 information or that collecting and reporting of the data by the local  
25 child support agencies will be onerous:

26 (1) The number of alleged obligors or fathers who receive  
27 CalWORKs benefits, food stamp benefits, and Medi-Cal benefits.

28 (2) The number of obligors or alleged fathers who are in state  
29 prison or county jail.

30 (3) The number of obligors or alleged fathers who do not have  
31 a social security number.

32 (4) The number of obligors or alleged fathers whose address is  
33 unknown.

34 (5) The number of obligors or alleged fathers whose complete  
35 name, consisting of at least a first and last name, is not known by  
36 the local child support agency.

37 (6) The number of obligors or alleged fathers who filed a tax  
38 return with the Franchise Tax Board in the last year for which a  
39 data match is available.

(7) The number of obligors or alleged fathers who have no income reported to the Employment Development Department during the third quarter of the fiscal year.

(8) The number of obligors or alleged fathers who have income between one dollar (\$1) and five hundred dollars (\$500) reported to the Employment Development Department during the third quarter of the fiscal year.

(9) The number of obligors or alleged fathers who have income between five hundred one dollars (\$501) and one thousand five hundred dollars (\$1,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(10) The number of obligors or alleged fathers who have income between one thousand five hundred one dollars (\$1,501) and two thousand five hundred dollars (\$2,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(11) The number of obligors or alleged fathers who have income between two thousand five hundred one dollars (\$2,501) and three thousand five hundred dollars (\$3,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(12) The number of obligors or alleged fathers who have income between three thousand five hundred one dollars (\$3,501) and four thousand five hundred dollars (\$4,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(13) The number of obligors or alleged fathers who have income between four thousand five hundred one dollars (\$4,501) and five thousand five hundred dollars (\$5,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(14) The number of obligors or alleged fathers who have income between five thousand five hundred one dollars (\$5,501) and six thousand five hundred dollars (\$6,500) reported to the Employment Development Department during the third quarter of the fiscal year.

(15) The number of obligors or alleged fathers who have income between six thousand five hundred one dollars (\$6,501) and seven thousand five hundred dollars (\$7,500) reported to the





1 Employment Development Department during the third quarter of  
2 the fiscal year.

3 (16) The number of obligors or alleged fathers who have  
4 income between seven thousand five hundred one dollars (\$7,501)  
5 and nine thousand dollars (\$9,000) reported to the Employment  
6 Development Department during the third quarter of the fiscal  
7 year.

8 (17) The number of obligors or alleged fathers who have  
9 income exceeding nine thousand dollars (\$9,000) reported to the  
10 Employment Development Department during the third quarter of  
11 the fiscal year.

12 (18) The number of obligors or alleged fathers who have two  
13 or more employers reporting earned income to the Employment  
14 Development Department during the third quarter of the fiscal  
15 year.

16 (19) The number of obligors or alleged fathers who receive  
17 unemployment benefits during the third quarter of the fiscal year.

18 (20) The number of obligors or alleged fathers who receive  
19 state disability benefits during the third quarter of the fiscal year.

20 (21) The number of obligors or alleged fathers who receive  
21 workers' compensation benefits during the third quarter of the  
22 fiscal year.

23 (22) The number of obligors or alleged fathers who receive  
24 Social Security Disability Insurance benefits during the third  
25 quarter of the fiscal year.

26 (23) The number of obligors or alleged fathers who receive  
27 Supplemental Security Income/State Supplementary Program for  
28 the Aged, Blind and Disabled benefits during the third quarter of  
29 the fiscal year.

30 (f) The department, in consultation with the Legislative  
31 Analyst's ~~office~~ *Office*, the Judicial Council, the California Family  
32 Support Council, and child support advocates, shall develop  
33 regulations to ensure that all local child support agencies report the  
34 data required by this section uniformly and consistently  
35 throughout California.

36 (g) For each federal fiscal year, *the* department shall provide  
37 the information for all participating counties to each member of a  
38 county board of supervisors, county executive officer, local child  
39 support agency, and the appropriate policy committees and fiscal  
40 committees of the Legislature on or before June 30, of each fiscal



1 year. The department shall provide data semiannually, based on the  
2 federal fiscal year, on or before December 31, of each year. The  
3 department shall present the information in a manner that  
4 facilitates comparison of county performance.

5 (h) For purposes of this section, “case” means a noncustodial  
6 parent, whether mother, father, or putative father, who is, or  
7 eventually may be, obligated under law for support of a child or  
8 children. For purposes of this definition, a noncustodial parent  
9 shall be counted once for each family that has a dependent child  
10 he or she may be obligated to support.

11 (i) This section shall be operative only for as long as Section  
12 17704 requires participating counties to report data to the  
13 department.

14 SEC. 97. Section 216.3 of the Financial Code is amended to  
15 read:

16 216.3. (a) For purposes of this section, the following  
17 definitions apply:

18 (1) “Applicable ~~Law~~” *law*” means:

19 (A) With respect to any bank, Division 1.5 (commencing with  
20 Section 4800), and any of the following provisions of Division 1  
21 (commencing with Section 99) of the Financial Code:

22 (i) Article 5 (commencing with Section 270) of Chapter 2.

23 (ii) Article 3 (commencing with Section 640) of Chapter 5.

24 (iii) Article 4.5 (commencing with Section 670) of Chapter 5.

25 (iv) Article 6 (commencing with Section 690) of Chapter 5.

26 (v) Chapter 6 (commencing with Section 750).

27 (vi) Chapter 10 (commencing with Section 1200).

28 (vii) Article 1 (commencing with Section 1400) of Chapter 11.

29 (viii) Chapter 12 (commencing with Section 1500).

30 (ix) Chapter 13.5 (commencing with Section 1700).

31 (x) Section 1936.

32 ~~(xi)~~

33 (xi) Section 1937.

34 ~~(xii)~~

35 (xii) Section 1938.

36 ~~(xiii)~~

37 (xiii) Section 1939.

38 ~~(xiv)~~

39 (xiv) Section 1945.

40 ~~(xv)~~

- 1 (xv) Section 1951.  
2 ~~(xvii)~~  
3 (xvi) Section 3359.  
4 ~~(xviii)~~  
5 (xvii) Chapter 19 (commencing with Section 3500).  
6 ~~(xix)~~  
7 (xviii) Chapter 21.5 (commencing with Section 3750).  
8 ~~(xx)~~  
9 (xix) Chapter 22 (commencing with Section 3800).  
10 (B) With respect to any savings association, any provision of  
11 Division 1.5 (commencing with Section 4800) and Division 2  
12 (commencing with Section 5000).  
13 (C) With respect to any issuer of travelers checks, any  
14 provision of Chapter 14A (commencing with Section 1851) of  
15 Division 1.  
16 (D) With respect to any insurance premium finance company,  
17 any provision of Division 7 (commencing with Section 18000).  
18 (E) With respect to any business and development corporation,  
19 any provision of Division 15 (commencing with Section 31000).  
20 (F) With respect to any credit union, any of the following  
21 provisions:  
22 (i) Section 14252.  
23 (ii) Section 14253.  
24 (iii) Section 14255.  
25 (iv) Article 4 (commencing with Section 14350) of Chapter 3  
26 of Division 5.  
27 (v) Section 14401.  
28 (vi) Section 14404.  
29 (vii) Section 14408, only as that section applies to gifts to  
30 directors, volunteers, and employees, and the related family or  
31 business interests of the directors, volunteers, and employees.  
32 (viii) Section 14409.  
33 (ix) Section 14410.  
34 (x) Article 5 (commencing with Section 14600) of Chapter 4  
35 of Division 5.  
36 (xi) Article 6 (commencing with Section 14650) of Chapter 4  
37 of Division 5, excluding subdivision (a) of Section 14651.  
38 (xii) Section 14803.  
39 (xiii) Section 14851.  
40 (xiv) Section 14858.



1 (xv) Section 14860.

2 (xvi) Section 14861.

3 (xvii) Section 14863.

4 (G) With respect to any person licensed to transmit money  
5 abroad, any provision of Chapter 14 (commencing with Section  
6 1800).

7 (H) With respect to any person licensed to sell payment  
8 instruments, any provision of Division 16 (commencing with  
9 Section 33000).

10 (2) "Licensee" means any bank, savings association, credit  
11 union, transmitter of money abroad, issuer of payment  
12 instruments, issuer of travelers checks, insurance premium finance  
13 agency, or business and industrial development corporation that is  
14 authorized by the commissioner to conduct business in this state.

15 (b) Notwithstanding any other provision of this code that  
16 applies to a licensee or a subsidiary of a licensee, after notice and  
17 an opportunity to be heard, the commissioner may, by order that  
18 shall include findings of fact which incorporates a determination  
19 made in accordance with subdivision (e), levy civil penalties  
20 against any licensee or any subsidiary of a licensee who has  
21 violated any provision of applicable law, any order issued by the  
22 commissioner, any written agreement between the commissioner  
23 and the licensee or subsidiary of the licensee, or any condition of  
24 any approval issued by the commissioner. Notwithstanding any  
25 other provision of law, neither the commissioner nor any employee  
26 of the department shall disclose or permit the disclosure of any  
27 record, record of any action, or information contained in a record  
28 of any action, taken by the commissioner under the provisions of  
29 this section, unless the action was taken pursuant to paragraph (2)  
30 of subdivision (b), to persons other than federal or state  
31 government employees who are authorized by statute to obtain the  
32 records in the performance of their official duties, unless the  
33 disclosure is authorized or requested by the affected licensee or the  
34 affected subsidiary of the licensee. The commissioner shall have  
35 the sole authority to bring any action with respect to a violation of  
36 applicable law subject to a penalty imposed under this section.

37 Except as provided in paragraphs (1) and (2), any penalty  
38 imposed by the commissioner may not exceed one thousand  
39 dollars (\$1,000) a day, provided that the aggregate penalty of all

1 offenses in any one action against any licensee or subsidiary of a  
2 licensee shall not exceed fifty thousand dollars (\$50,000).

3 (1) If the commissioner determines that any licensee or  
4 subsidiary of the licensee has recklessly violated any applicable  
5 law, any order issued by the commissioner, any provision of any  
6 written agreement between the commissioner and the licensee or  
7 subsidiary, or any condition of any approval issued by the  
8 commissioner, the commissioner may impose a penalty not to  
9 exceed five thousand dollars (\$5,000) per day, provided that the  
10 aggregate penalty of all offenses in an action against any licensee  
11 or subsidiary of a licensee shall not exceed seventy-five thousand  
12 dollars (\$75,000).

13 (2) If the commissioner determines that any licensee or  
14 subsidiary of the licensee has knowingly violated any applicable  
15 law, any order issued by the commissioner, any provision of any  
16 written agreement between the commissioner and the licensee or  
17 subsidiary, or any condition of any approval issued by the  
18 commissioner, the commissioner may impose a penalty not to  
19 exceed ten thousand dollars (\$10,000) per day, provided that the  
20 aggregate penalty of all offenses in an action against any licensee  
21 or subsidiary of a licensee shall not exceed 1 percent of the total  
22 assets of the licensee or subsidiary of a licensee subject to the  
23 penalty.

24 (c) Nothing in this section shall be construed to impair or  
25 impede the commissioner from pursuing any other administrative  
26 action allowed by law.

27 (d) Nothing in this section shall be construed to impair or  
28 impede the commissioner from bringing an action in court to  
29 enforce any law or order he or she has issued, including orders  
30 issued under this section. Nothing in this section shall be construed  
31 to impair or impede the commissioner from seeking any other  
32 damages or injunction allowed by law.

33 (e) In determining the amount and the appropriateness of  
34 initiating a civil money penalty under subdivision (b), the  
35 commissioner shall consider all of the following:

36 (1) Evidence that the violation or practice or breach of duty was  
37 intentional or was committed with a disregard of the law or with  
38 a disregard of the consequences to the institution.

39 (2) The duration and frequency of the violations, practices, or  
40 breaches of duties.

1 (3) The continuation of the violations, practices, or breaches of  
2 duty after the licensee or subsidiary of the licensee was notified,  
3 or, alternatively, its immediate cessation and correction.

4 (4) The failure to cooperate with the commissioner in effecting  
5 early resolution of the problem.

6 (5) Evidence of concealment of the violation, practice, or  
7 breach of duty or, alternatively, voluntary disclosure of the  
8 violation, practice, or breach of duty.

9 (6) Any threat of loss, actual loss, or other harm to the  
10 institution, including harm to the public confidence in the  
11 institution, and the degree of that harm.

12 (7) Evidence that a licensee or subsidiary of a licensee received  
13 financial gain or other benefit as a result of the violation, practice,  
14 or breach of duty.

15 (8) Evidence of any restitution paid by a licensee or subsidiary  
16 of a licensee of losses resulting from the violation, practice, or  
17 breach of duty.

18 (9) History of prior violations, practices, or breaches of duty,  
19 particularly where they are similar to the actions under  
20 consideration.

21 (10) Previous criticism of the institution for similar actions.

22 (11) Presence or absence of a compliance program and its  
23 effectiveness.

24 (12) Tendency to engage in violations of law, unsafe or  
25 unsound banking practices, or breaches of duties.

26 (13) The existence of agreements, commitments, orders, *or*  
27 conditions imposed in writing intended to prevent the violation,  
28 practice, or breach of duty.

29 (14) Whether the violation, practice, or breach of duty causes  
30 quantifiable, economic benefit or loss to the licensee or the  
31 subsidiary of the licensee. In those cases, removal of the benefit or  
32 recompense of the loss usually will be insufficient, by itself, to  
33 promote compliance with the applicable law, order, or written  
34 agreement. The penalty amount should reflect a remedial purpose  
35 and should provide a deterrent to future misconduct.

36 (15) Other factors as the commissioner may, in his or her  
37 opinion, consider relevant to assessing the penalty or establishing  
38 the amount of the penalty.

39 (f) The amounts collected under this section shall be deposited  
40 in the appropriate fund of the department. For purposes of this

1 subdivision, the term “appropriate fund” means the fund to which  
2 the annual assessments of fined licensees, or the parent licensee of  
3 the fined subsidiary, are credited.

4 SEC. 98. Section 258 of the Financial Code is amended to  
5 read:

6 258. At least once each month, the commissioner shall issue  
7 and disseminate as the commissioner deems appropriate a bulletin  
8 containing the following information:

9 (a) Information regarding any *of* the following actions taken  
10 since issuance of the previous bulletin:

11 (1) The filing, approval, or denial under Chapter 3  
12 (commencing with Section 350) of an application for authority to  
13 organize a California state bank, or the issuance under Chapter 3  
14 of a certificate of authority to a California state bank.

15 (2) The filing, approval, or denial under Article 1  
16 (commencing with Section 5400) of Chapter 2 of Division 2 of an  
17 application for the issuance of an organizing permit for the  
18 organization of a California savings association, or for the issuance  
19 under Article 2 (commencing with Section 5500) of Chapter 2 of  
20 Division 2 of a certificate of authority to a California savings  
21 association.

22 (3) The filing, approval, or denial under Article 2  
23 (commencing with Section 14150) of Chapter 2 of Division 5 of  
24 an application for a certificate to act as a credit union, or the  
25 issuance of a certificate to engage in the business of a credit union.

26 (4) The filing, approval, or denial under Chapter 14  
27 (commencing with Section 1800), Chapter 14A (commencing  
28 with Section 1851), Division 7 (commencing with Section 18000),  
29 Division 15 (commencing with Section 31000), or Division 16  
30 (commencing with Section 33000) of an application for a license  
31 to engage in business, or the issuance under any of those laws of  
32 a license to engage in business.

33 (5) The filing, approval, or denial under Chapter 13.5  
34 (commencing with Section 1700) of an application by a foreign  
35 (other nation) bank to establish its first office of any particular  
36 class (as determined under Section 1701) in this state, or the  
37 issuance under that chapter of a license in connection with the  
38 establishment of such an office.





1 (6) The filing, approval, or denial under Division 1.5  
2 (commencing with Section 4800) of an application for approval of  
3 a sale, merger, or conversion.

4 (7) The filing, approval, or denial under Article 6  
5 (commencing with Section 5700) of Chapter 2 of Division 2 of an  
6 application for approval of a conversion of a federal savings  
7 association into a state savings association, or the filing of a federal  
8 charter of a state savings association that has converted to a federal  
9 savings association.

10 (8) The filing, approval, or denial under Article 7  
11 (commencing with Section 5750) of Chapter 2 of Division 2 of an  
12 application for approval of a reorganization, merger,  
13 consolidation, or transfer of assets of a state savings association.

14 (9) The filing, approval, or denial under Chapter 9  
15 (commencing with Section 15200) of Division 5 of an application  
16 for approval of a merger, dissolution, or conversion of a credit  
17 union.

18 (10) The taking of possession of the property and business of  
19 a California state bank, savings association, credit union, or person  
20 licensed by the commissioner under any of the laws cited in  
21 paragraph (2).

22 (b) Other information as the commissioner deems appropriate.  
23 SEC. 99. Section 645 of the Financial Code is amended to  
24 read:

25 645. If the commissioner finds that the shareholders' equity  
26 of a bank is not adequate or that the making by a bank or by any  
27 majority-owned subsidiary of a bank of a distribution to the  
28 shareholders of the bank would be unsafe or unsound for the bank,  
29 the commissioner may order the bank and its majority-owned  
30 subsidiaries not to make any distribution to the shareholders of the  
31 bank. In addition to the order authorized by this section, the  
32 commissioner may levy a civil penalty against *the* bank pursuant  
33 to Section 216.3.

34 SEC. 100. Section 690 of the Financial Code is amended to  
35 read:

36 690. Unless the context otherwise requires, in this article:

37 (a) "Offer" or "offer to sell" includes every attempt or offer  
38 to dispose of, or solicitation of an offer to buy, a security for value.

39 (b) "Sale" or "sell" includes every contract of sale of, contract  
40 to sell, or disposition of, a security for value. "Sale" or "sell"

1 includes any exchange of securities and any change in the rights,  
2 preferences, privileges, or restrictions of or on outstanding  
3 securities.

4 (c) “Security” means any stock, capital note, or debenture, or  
5 any warrant, right, or option to subscribe to or purchase any of the  
6 foregoing.

7 (d) The terms defined in subdivisions (a) and (b) ~~of this section~~  
8 do not include any stock dividend payable with respect to common  
9 stock of a bank solely (except for any cash or ~~scrip~~ *scrip* paid for  
10 fractional shares) in shares of such common stock, if such bank has  
11 no other class of voting stock outstanding; provided, that shares  
12 issued in any such dividend shall be subject to any conditions  
13 previously imposed by the commissioner applicable to the shares  
14 with respect to which they are issued.

15 SEC. 101. Section 777.5 of the Financial Code is amended to  
16 read:

17 777.5. (a) Notwithstanding the provisions of Sections 1051,  
18 1052, and 1054 of the Labor Code and Section 2947 of the Penal  
19 Code, a bank or any affiliate thereof, ~~licensed~~ *licensed* under the  
20 laws of any state or of the United States, or any officer or employee  
21 thereof, may deliver fingerprints taken of a director, an officer, an  
22 employee, or an applicant for employment to local, state, or federal  
23 law enforcement agencies for the purpose of obtaining  
24 information as to the existence and nature of a criminal record, if  
25 any, of the person fingerprinted relating to convictions, and to any  
26 arrest for which that person is released on bail or on his or her own  
27 recognizance pending trial, for the commission or attempted  
28 commission of a crime involving robbery, burglary, theft,  
29 embezzlement, fraud, forgery, bookmaking, receiving stolen  
30 property, counterfeiting, or involving checks or credit cards or  
31 using computers.

32 (b) The Department of Justice shall, pursuant to Section 11105  
33 of the Penal Code, and a local agency may, pursuant to Section  
34 13300 of the Penal Code, furnish to the officer of the bank or  
35 affiliate responsible for the final decision regarding employment  
36 of the person fingerprinted, or to his or her designees having  
37 responsibilities for personnel or security decisions in the usual  
38 scope and course of their employment with the bank or affiliate,  
39 summary criminal history information when requested pursuant to  
40 this section. If, upon evaluation of the criminal history information



1 received pursuant to this section, the bank or affiliate determines  
2 that employment of the person fingerprinted would constitute an  
3 unreasonable risk to that bank or affiliate or its customers, the  
4 person may be denied employment.

5 (c) A request for records pursuant to this section made of the  
6 Department of Justice shall be on a form approved by the  
7 department. The department may charge a fee to be paid by the  
8 requesting bank or affiliate pursuant to subdivision (e) of Section  
9 11105 of the Penal Code. No request shall be submitted without the  
10 written consent of the person fingerprinted.

11 (d) Any criminal history information obtained pursuant to this  
12 section is confidential and no recipient shall disclose its contents  
13 other than for the purpose for which it was acquired.

14 (e) "Affiliate," as used in this section, means any corporation  
15 controlling, controlled by, or under common control with, a bank,  
16 whether directly, indirectly, or through one or more  
17 intermediaries.

18 SEC. 102. Section 867 of the Financial Code is amended to  
19 read:

20 867. (a) Funds deposited in an account at a depository  
21 institution shall be available on the second business day after the  
22 business day on which those funds are deposited in the case of a  
23 cashier's check, certified check, teller's check, or depository  
24 check subject to the following:

25 (1) The check is endorsed only by the person to whom it was  
26 issued.

27 (2) The check is deposited in a receiving depository institution  
28 ~~which~~ *that* is staffed by individuals employed by that institution.

29 (3) The check is deposited with a special deposit slip ~~which~~ *that*  
30 indicates it is a cashier's check, certified check, teller's check, or  
31 depository check, as the case may be.

32 (4) The check is deposited into an account in the name of a  
33 customer ~~which~~ *that* has maintained any account with the  
34 receiving depository institution for a period of 60 days or more.

35 (5) The face amount of the check is for five thousand dollars  
36 (\$5,000) or less.

37 In the case of funds deposited on any business day in an account  
38 at a depository institution by depository checks, the aggregate  
39 amount of which exceeds five thousand dollars (\$5,000), this

1 subdivision shall apply only with respect to the first five thousand  
2 dollars (\$5,000) of the aggregate amount.

3 (b) Subdivision (a) does not apply to a depository check if the  
4 receiving depository institution reasonably believes that the check  
5 is uncollectible from the originating depository institution. For  
6 purposes of this subdivision, “reasonable cause to believe”  
7 requires the existence of facts ~~which~~ *that* would cause a  
8 well-grounded belief in the mind of a reasonable person. These  
9 reasons shall include, but not be limited to, a belief that (1) the  
10 drawer or drawee of the depository check has been, or will  
11 imminently be, adjudicated a bankrupt or placed in receivership or  
12 (2) the depository check may be involved in a fraud or in a scheme  
13 commonly known as “kiting.” In these situations, the depository  
14 institution electing to proceed under this subdivision shall so  
15 notify the drawer and drawee no later than the close of the next  
16 business day following deposit of the depository check.

17 (c) For purposes of this section, the following terms have the  
18 following ~~meaning~~ *meanings*:

19 (1) “Account” means any demand deposit account and any  
20 other similar transaction account at a depository institution.

21 (2) “Business day” means any day other than a Saturday,  
22 Sunday, or legal holiday.

23 (3) “Cashier’s check” means any check ~~which~~ *that* is subject  
24 to the following:

25 (A) The check is drawn on a depository institution.

26 (B) The check is signed by an officer or employee of the  
27 depository institution.

28 (C) The check is a direct obligation of the depository  
29 institution.

30 (4) “Certified check” means any check with respect to which  
31 a depository institution certifies the following:

32 (A) That the signature on the check is genuine.

33 (B) The depository institution has set aside funds ~~which~~ *that* are  
34 equal to the amount of the check and will be used only to pay that  
35 check.

36 (5) “Depository check” means any cashier’s check, certified  
37 check, teller’s check, and any other functionally equivalent  
38 instrument, as determined by the Board of ~~Governor’s~~ *Governors*  
39 of the Federal Reserve System or the commissioner.

(6) “Depository institution” has the meaning given in clauses (i) ~~through~~ to (vi), *inclusive*, of Section 19(b)(1)(A) of the Federal Reserve Act.

(7) “Teller’s check” means any check issued by a depository institution and drawn on another depository institution.

(d) Except for the specific circumstances and checks described in this section, this section is not intended to restrict or preempt the regulatory authority of the commissioner.

(e) In the event of a suspension or modification of any similar provisions in the federal Expedited Funds Availability Act, the effect of this section shall be similarly suspended or modified.

SEC. 103. Section 1753 of the Financial Code is amended to read:

1753. (a) (1) No foreign (other nation) bank shall establish or maintain an agency or branch office unless the commissioner shall have first approved the establishment of ~~such~~ *that* office and issued a license authorizing ~~such~~ *the* bank to maintain the office.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank from establishing or maintaining a federal agency or federal branch in this state.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to establish an agency or branch office, the commissioner shall approve ~~such~~ *the* application:

(1) That the bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the office are each of good character and sound financial standing;

(2) That the financial history and condition of the bank are satisfactory.

(3) That the management of the bank and the proposed management of the office are adequate;

(4) That it is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in a safe and sound manner and in compliance with all applicable laws, regulations, and orders;

(5) That the bank’s plan to establish and to maintain the office affords reasonable promise of successful operation;

(6) That the bank’s establishment and maintenance of the office will promote the public convenience and advantage; ~~and~~.

(7) In case the office is to be a branch office, that the foreign nation where the bank is domiciled permits banks organized under the laws of this state and national banks headquartered in this state to establish and maintain in ~~such~~ *those* foreign nation offices substantially equivalent to agencies, offices substantially equivalent to branch offices, or wholly (except for directors' qualifying shares) owned banks organized under the laws of ~~such~~ *the* foreign nation.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to establish an agency or branch office has been approved and all conditions precedent to the issuance of a license authorizing ~~such~~ *the* bank to maintain ~~such~~ *the* office have been fulfilled, the commissioner shall issue ~~such~~ *the* license.

SEC. 104. Section 1807 of the Financial Code is amended to read:

1807. (a) The commissioner may by order or regulation grant exemptions from this section in ~~ease~~ *cases* where the commissioner finds that the requirements of this section are not necessary.

(b) Each licensee shall, within 90 days after the end of each fiscal year, or within such extended time as the commissioner may prescribe, file with the commissioner an audit report for the fiscal year.

(c) The audit report called for in subdivision (b) shall comply with all of the following provisions:

(1) The audit report shall contain such audited financial statements of the licensee for or as of the end of the fiscal year prepared in accordance with generally accepted accounting principles and such other information as the commissioner may require.

(2) The audit report shall be based upon an audit of the bank conducted in accordance with generally accepted auditing standards and such other requirements as the commissioner may prescribe.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is not unsatisfactory to the commissioner.

(4) The audit report shall include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the licensee to take such action as the commissioner may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

(d) Each licensee shall, not more than 45 days after the end of each quarter (except the fourth quarter of its fiscal year), or within a longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing all of the following:

(1) Financial statements, including balance sheet, income statement, statement of changes in shareholders' equity, and statement of cash flows, for, or as of the end of, that fiscal quarter, verified by two of the licensee's principal officers. The verification shall state that each of the officers making the verification has a personal knowledge of the matters in the report and that each of them believes that each statement on the report is true.

(2) The current address of the headquarters office and each branch office of the licensee and each agent at which the licensee receives transmission money in this state.

(3) The name and business address of each person who acted as an agent of the licensee during the quarter in this state, and if ~~such~~ the person is no longer an agent of the licensee, the date on which ~~such~~ the relationship terminated.

(4) ~~Such other~~ Other information as the commissioner may by regulation or order require.

(e) Each licensee shall file with the commissioner ~~such~~ other reports as and when the commissioner may by regulation or order require.

SEC. 105. Section 1908 of the Financial Code is amended to read:

1908. The commissioner, a deputy commissioner, and every examiner assigned to an examination may administer an oath to any person whose testimony is required for the purposes of any examination authorized by this division and may by issuance of ~~subpena~~ subpoena compel the appearance of any person and the production of any evidence for the purposes of the examination.



1 SEC. 106. Section 3804 of the Financial Code is amended to  
2 read:

3 3804. Fees shall be paid to and collected by the commissioner  
4 as follows:

5 (a) The fee for filing with the commissioner an application by  
6 an uninsured foreign (other state) bank for approval to establish a  
7 facility is two hundred fifty dollars (\$250).

8 (b) The fee for filing with the commissioner an application by  
9 an uninsured foreign (other state) bank that is licensed pursuant to  
10 Article 4 (commencing with Section 3860) to maintain a facility  
11 for approval to relocate or to close the facility is one hundred  
12 dollars (\$100).

13 (c) The fee for issuing a license pursuant to Article 4  
14 (commencing with Section 3860) is twenty-five dollars (\$25).

15 (d) Each foreign (other state) state bank that on June 1 of any  
16 year maintains one or more California branch offices shall pay, on  
17 or before the following July 1, a fee of one thousand dollars  
18 (\$1,000) per California branch office. However, the minimum fee  
19 paid by a foreign (other state) state bank under this subdivision  
20 shall be not less than three thousand dollars (\$3,000) and the  
21 maximum fee shall be not more than fifty thousand dollars  
22 (\$50,000).

23 (e) Each foreign (other state) bank that on June 1 of any year  
24 maintains a facility but no California branch office shall pay, on  
25 or before the following July 1, a fee of two hundred fifty dollars  
26 (\$250) for each facility.

27 (f) If the commissioner makes an examination in connection  
28 with a pending application, as described in subdivision (a) or (b),  
29 the applicant shall pay a fee for the examination of seventy-five  
30 dollars (\$75) per hour for each examiner engaged in the  
31 examination plus, if in the opinion of the commissioner it is  
32 necessary for any examiner engaged in the examination to travel  
33 outside this state, the travel expenses of the examiner.

34 (g) If the commissioner makes an examination of a foreign  
35 (other state) state bank that maintains a California branch office,  
36 the bank shall pay a fee for the examination of seventy-five dollars  
37 (\$75) per hour for each examiner engaged in the examination plus,  
38 if in the opinion of the commissioner it is necessary for any  
39 examiner engaged in the examination to travel outside this state,  
40 the travel expenses of the examiner.

(h) If the commissioner makes an examination of a facility of an uninsured foreign (other state) bank licensed under Article 4 (commencing with Section 3860), the bank shall pay a fee for the examination of seventy-five dollars (\$75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(i) If the commissioner makes an examination of a facility of an insured foreign (other state) bank that does not maintain a California branch office, the bank shall pay a fee for the examination of seventy-five *dollars* (\$75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

SEC. 107. Section 14401 of the Financial Code is amended to read:

14401. A credit union may borrow money from any source in an aggregate amount not to exceed 50 percent of the paid-in and unimpaired capital and surplus of the credit union. Loans from the National Credit Union Central ~~Liquidity~~ *Liquidity* Facility (12 U.S.C. ~~Section Sec. 1795 and following~~) *et seq.*) shall not be included in computing the aggregate borrowings of a credit union. For the purposes of this division, “certificate for funds” means borrowed money.

SEC. 108. Section 50122 of the Financial Code is amended to read:

50122. (a) The application for a residential mortgage lender license shall be in writing, executed under penalty of perjury, and verified on a form prescribed by the commissioner. If an applicant proposes to engage in business as a residential mortgage loan servicer as well as a residential mortgage lender, this information shall be set forth in the application. The commissioner may issue a license under this chapter to engage in business as a residential mortgage lender or to engage in business as a residential mortgage lender and residential mortgage loan servicer. A person filing an application under this chapter to engage in business as a residential mortgage lender and a residential mortgage loan servicer is not

1 required to file an application under Chapter 3 (commencing with  
2 Section 50130) ~~of this division.~~

3 (b) The application shall contain the name and complete  
4 business and residential address or addresses of the applicant. If  
5 the applicant is a partnership, association, corporation, or other  
6 entity, the application shall contain the names and complete  
7 business and residential addresses of each member, director, and  
8 principal officer. The application also shall include a description  
9 of the activities of the applicant in the detail and for the periods that  
10 the commissioner may require, including all of the following:

11 (1) A statement of financial solvency, noting the net worth  
12 requirements and supported by an audited financial statement  
13 prepared by an independent certified public accountant, and access  
14 to the supporting credit information as required by this division.

15 (2) A statement that the applicant or its members, directors, or  
16 principals, as appropriate, are at least 18 years of age.

17 (3) Information as to the character, fitness, financial and  
18 business responsibility, background, experience, and criminal  
19 convictions of any of the following:

20 (A) Any person that owns or controls, directly or indirectly, 10  
21 percent or more of any class of stock of the applicant.

22 (B) Any person that controls, directly or indirectly, the election  
23 of 25 percent or more of the members of the board of directors of  
24 ~~a~~ *an* applicant.

25 (C) Any person or entity that significantly influences or  
26 controls the management of the applicant.

27 (4) A description of any disciplinary action filed under any  
28 other license through which the person conducts its business.

29 (5) A description of any adverse judgments entered in court  
30 actions filed by borrowers based upon allegations of fraud,  
31 misrepresentation, or dishonesty in the conduct of the person's  
32 business.

33 (6) A copy of the fidelity bond currently in effect.

34 (7) Other information as required by rule of the commissioner.

35 SEC. 109. Section 206 of the Fish and Game Code is amended  
36 to read:

37 206. (a) In addition to, or in conjunction with, other regular  
38 or special meetings, the commission shall, at least every three  
39 years, hold meetings in the first 10 days of August, October,  
40 November, and December for the purpose of considering and

1 adopting revisions to regulations relating to fish, amphibians, and  
2 reptiles. The commission shall alternate the locations of the  
3 August and December meetings between Los Angeles or Long  
4 Beach and Sacramento, and the October and November meetings  
5 between San Diego and Redding or Red Bluff.

6 (b) At the August meeting, the commission shall receive  
7 recommendations for regulations from its own members and staff,  
8 the department, other public agencies, and the public.

9 (c) At the October and November meetings, the commission  
10 shall devote time for open public discussion of proposed  
11 regulations presented at the August meeting. The department shall  
12 participate in this discussion by reviewing and presenting its  
13 findings regarding each regulation proposed by the public and by  
14 responding to objections raised pertaining to its proposed  
15 regulations. After considering the public discussion, the  
16 commission shall announce, prior to adjournment of the  
17 November meeting, the regulations it intends to add, amend, or  
18 repeal relating to fish, ~~amphibia~~ *amphibians*, and reptiles.

19 (d) At the December meeting, the commission may choose to  
20 hear additional public discussion regarding the regulations it  
21 intends to adopt. At, or within 20 days after, the meeting, the  
22 commission shall add, amend, or repeal regulations relating to any  
23 recommendation received at the August meeting regarding fish,  
24 ~~amphibia~~ *amphibians*, and reptiles it deems necessary to preserve,  
25 properly utilize, and maintain each species or subspecies.

26 (e) Within 45 days after adoption, the department shall publish  
27 and distribute regulations adopted pursuant to this section.

28 SEC. 110. Section 1570 of the Fish and Game Code is  
29 amended to read:

30 1570. In establishing the Shared Habitat Alliance for  
31 Recreational Enhancement (“SHARE”) ~~Program~~ *program*, it is  
32 the intent of the Legislature to encourage private landowners to  
33 voluntarily make their land available to the public for  
34 wildlife-dependent recreational activities. The Legislature further  
35 encourages private landowners to use any funds received from the  
36 SHARE program for wildlife conservation purposes on their  
37 property. The SHARE program shall be a collaborative effort by  
38 all participants to facilitate wildlife-dependent recreational  
39 activities on private land at minimal expense to the state. The  
40 Legislature declares that interested nongovernmental

1 organizations are the key to developing, planning, and  
2 implementing the SHARE program.

3 SEC. 111. Section 1572 of the Fish and Game Code is  
4 amended to read:

5 1572. (a) The department, in partnership with nonprofit  
6 conservation groups and other interested nongovernmental  
7 organizations that seek to increase and enhance  
8 wildlife-dependent recreational opportunities, shall work  
9 cooperatively to plan and develop a program to facilitate public  
10 access to private lands for wildlife-dependent recreational  
11 activities.

12 (b) Once the terms of the program have been established and  
13 approved by the partnership, the commission shall verify that  
14 sufficient demonstration of private landowner and program  
15 participant interest has been shown to support the program. The  
16 Department of Finance shall verify that sufficient funds exist in the  
17 SHARE Account to start the program. Upon that verification, in  
18 order to facilitate the implementation of the program, the  
19 commission shall adopt regulations and fees for the management  
20 and control of wildlife-dependent recreational activities on land  
21 that is subject to this article.

22 (c) The SHARE Account is hereby established in the Fish and  
23 Game Preservation Fund. Money deposited in the SHARE  
24 Account from the sources cited in subdivision (d) shall only be  
25 used for the purposes set forth in this article and to repay the  
26 General Fund or the Fish and Game Preservation Fund, as  
27 appropriate, for any expenses incurred by the department,  
28 commission, or the Department of Finance in establishing the  
29 SHARE ~~Program~~ program.

30 (d) No General Fund ~~money~~ moneys shall be used for the  
31 program. The department may impose user fees or apply for  
32 grants, federal funds, or other contributions from nonstate sources  
33 to fund the program. Funds may also be used for wildlife  
34 conservation purposes on lands subject to an agreement under the  
35 program. Notwithstanding Section 13220, no ~~money~~ moneys shall  
36 be available for the program unless the Legislature appropriates  
37 ~~money~~ moneys to the department therefor.

38 (e) The department shall maintain data on the types of  
39 wildlife-dependent recreational activities preferred by users.



1 SEC. 112. Section 1613 of the Fish and Game Code is  
2 amended to read:

3 1613. If, after receiving a notification, but before the  
4 department executes a final agreement, the director of the  
5 department informs the entity, in writing, that the activity  
6 described in the notification, or any activity or conduct by the  
7 entity directly related thereto, violates any provision of this code  
8 or the regulations that implement the code, the department may  
9 suspend processing the notification, and subparagraph (D) of  
10 paragraph (4) of subdivision (a) of Section 1602 and the timelines  
11 specified in Section 1603 do not apply. This section ceases to apply  
12 if any of the following occurs:

13 (a) The department determines that the violation has been  
14 remedied.

15 (b) Legal action to prosecute the violation is not filed within the  
16 applicable statute of limitations.

17 (c) Legal action to prosecute the violation has been terminated.

18 SEC. 113. Section 7149.2 of the Fish and Game Code is  
19 amended to read:

20 7149.2. (a) In addition to Sections 714, 7149, and 7149.05,  
21 the department shall issue a lifetime sport fishing license under this  
22 section. A lifetime sport fishing license authorizes the taking of  
23 fish, ~~amphibia~~ *amphibians*, or reptiles anywhere in this state in  
24 accordance with the law for purposes other than profit for the life  
25 of the person to whom issued unless revoked for a violation of this  
26 code or regulations adopted under this code. A lifetime sport  
27 fishing license is not transferable. A lifetime sport fishing license  
28 does not include any special license tags, license stamps, or fees.

29 (b) A lifetime sport fishing license may be issued to residents  
30 of this state, as follows:

31 (1) To a person 62 years of age or over, upon payment of a base  
32 fee of three hundred sixty-five dollars (\$365).

33 (2) To a person 40 years of age or over and less than 62 years  
34 of age, upon payment of a base fee of five hundred forty dollars  
35 (\$540) ~~in 1998~~.

36 (3) To a person 10 years of age or over and less than 40 years  
37 of age upon payment of a base fee of six hundred dollars (\$600).

38 (4) To a person less than 10 years of age upon payment of a base  
39 fee of three hundred sixty-five dollars (\$365).

1 (c) Nothing in this section requires a person less than 16 years  
2 of age to obtain a license to take fish, ~~amphibia~~ *amphibians*, or  
3 reptiles for purposes other than profit.

4 (d) Nothing in this section exempts a license applicant from  
5 meeting other qualifications or requirements otherwise  
6 established by law for the privilege of sport fishing.

7 (e) Upon payment of a base fee of two hundred forty-five  
8 dollars (\$245), a person holding a lifetime sport fishing license or  
9 lifetime sportsman's license shall be entitled annually to the  
10 privileges afforded to a person holding a second-rod stamp or  
11 validation issued pursuant to Section 7149.4; or 7149.45, a sport  
12 fishing ocean enhancement stamp or validation issued pursuant to  
13 paragraph (1) of subdivision (a) of Section 6596 or 6596.1, one  
14 steelhead trout report restoration card issued pursuant to Section  
15 7380, a Bay-Delta sport fishing enhancement stamp or validation  
16 issued pursuant to Section 7360 or 7360.1, and one salmon punch  
17 card issued pursuant to regulations adopted by the commission.  
18 Lifetime privileges issued pursuant to this subdivision are not  
19 transferable.

20 (f) The base fees specified in this section are applicable  
21 commencing January 1, 2004, and shall be adjusted annually  
22 thereafter pursuant to Section 713.

23 SEC. 114. Section 7361 of the Fish and Game Code is  
24 amended to read:

25 7361. Fees received by the department pursuant to Section  
26 7360 shall be deposited in a separate account in the Fish and Game  
27 Preservation Fund. The department shall expend the funds in that  
28 account for the long-term, sustainable benefit of the primary  
29 ~~bay-delta~~ *Bay-Delta* sport fisheries, including, but not limited to,  
30 striped bass, sturgeon, black bass, halibut, salmon, surf perch,  
31 steelhead trout, and American shad. Funds shall be expended to  
32 benefit sport fish populations, sport fishing opportunities, and  
33 anglers within the geographic parameters established in Section  
34 7360, and consistent with state and federal Endangered Species  
35 Act requirements and applicable commission policies. It is the  
36 intent of the Legislature that these funds be used to augment, not  
37 replace, funding that would otherwise be allocated to ~~bay-delta~~  
38 *Bay-Delta* sport fisheries from the sale of fishing licenses, the  
39 California Bay-Delta Authority, or other federal, state, or local  
40 funding sources.



1 SEC. 115. Section 7362 of the Fish and Game Code is  
2 amended to read:

3 7362. (a) The director shall appoint a Bay-Delta Sport  
4 Fishing Enhancement Stamp Fund Advisory Committee,  
5 consisting of nine members. The committee members shall be  
6 selected from names of persons submitted by anglers and  
7 associations representing ~~bay-delta~~ Bay-Delta anglers of this state  
8 and shall serve at the discretion of the director for terms of not  
9 more than four years. The director shall appoint persons to the  
10 committee who possess experience in subjects with specific value  
11 to the committee and shall attempt to balance the perspective of  
12 different anglers.

13 (b) The advisory committee shall recommend to the  
14 department projects and budgets for the expenditure of revenue  
15 received pursuant to Section 7360. The department shall give full  
16 consideration to the committee's recommendations.

17 (c) The department shall submit to the committee, at least  
18 annually, an accounting of funds derived from the Bay-Delta Sport  
19 Fishing Enhancement Stamps and validations, including the  
20 number of stamps and validations sold, funds generated and  
21 expended, and the status of programs funded pursuant to this  
22 article. In addition, the department shall report, at least annually,  
23 to the committee on the status of projects undertaken with funds  
24 from that stamp or validation, including reporting the  
25 department's reasoning in cases where committee  
26 recommendations are not followed.

27 SEC. 116. Section 12011 of the Fish and Game Code is  
28 amended to read:

29 12011. (a) In addition to the penalty provided in paragraph  
30 (4) of subdivision (b) of Section 12002, any person convicted of  
31 a violation of subdivision (a) ~~or (b)~~ of Section 5650 is subject to  
32 an additional fine of all of the following:

33 (1) Not more than ten dollars (\$10) for each gallon or pound of  
34 material discharged. The amount of the fine shall be reduced for  
35 every gallon or pound of the illegally discharged material that is  
36 recovered and properly disposed of by the responsible party.

37 (2) An amount equal to the reasonable costs incurred by the  
38 state or local agency for cleanup and abatement and to fully  
39 mitigate all actual damages to fish, plant, bird, or animal life and  
40 habitat.

(3) Where the state or local agency is required to undertake cleanup or remedial action because the responsible person refuses or is unable to fully ~~cleanup~~ *clean up* the discharge, an amount equal to the reasonable costs incurred by the state or local agency, in addition to the amount of funds, if any, expended by the responsible person, in cleaning up the illegally discharged material or abating its effects, or both cleaning up and abating those effects.

(b) Notwithstanding the jurisdiction of the department over illegal discharges and pollution as provided in Section 5650, the fines specified in this section do not apply to discharges in compliance with a national pollution discharge elimination system permit or a state or regional board waste discharge permit.

SEC. 117. Section 6047.4 of the Food and Agricultural Code is amended to read:

6047.4. (a) The powers of the board shall be the following:

(1) Submit recommendations to the secretary on, but not limited to, the following:

(A) Selection of officers.

(B) Terms of office for board members.

(C) Annual assessment rate.

(D) Annual budget.

(E) Expenditures authorized under Section 6047.5.

(2) Receive money from the assessment and other sources.

(3) Adopt, amend, and rescind all proper and necessary bylaws and procedures.

(4) Coordinate its activities with the secretary's science advisory board and ~~agricultural/governmental~~ *agricultural/governmental* advisory task force.

(b) A majority of the members of the board shall constitute a quorum of the board. The vote of a majority of the members present at a meeting at which there is a quorum constitutes an act of the board, except for actions taken pursuant to subdivision (a) of Section 6047.7, which shall require a majority of the vote of the board. The board may continue to transact business at a meeting where a quorum is initially present, notwithstanding the withdrawal of members, provided any action is approved by the requisite majority of the required quorum.

(c) As authorized by the board, members of the board may receive per diem and mileage in accordance with the rules of the

1 Department of Personnel Administration for attendance at  
2 meetings and other approved board activities.

3 SEC. 118. Section 6047.82 of the Food and Agricultural Code  
4 is amended to read:

5 6047.82. (a) From and after the filing for record of the order  
6 of the board of supervisors declaring the district organized, and  
7 certification from the county clerk that the grower vote upheld the  
8 creation of the district, pursuant to Sections 6047.76 and 6047.77,  
9 and the appointment and qualification of its first board of directors,  
10 the organization of the district is complete. The district shall  
11 operate for a period of five years from the date of its organization,  
12 and shall cease to exist after five years unless the district is  
13 reauthorized by the board of supervisors.

14 (b) The board of directors shall hold a public hearing six  
15 months prior to termination of its initial organization or last  
16 reauthorization to determine whether the conditions of the  
17 glassy-winged sharpshooter or Pierce's disease warrant the  
18 reauthorization of the district for an additional five years.

19 (c) The notice of hearing shall state the name of the district and  
20 that consideration is being given to reauthorizing the district for an  
21 additional five years, the boundaries of the district, and the time  
22 and place for the hearing. Notice of the hearing shall be given as  
23 provided in Sections 6047.71 and 6047.72. The board of directors  
24 shall submit the record of the hearing and its recommendation to  
25 the board of supervisors within 90 days of the hearing. The board  
26 of supervisors shall approve or reject the recommendation. If it  
27 rejects the recommendation, the board of supervisors shall return  
28 the report accompanied by its reasons for the rejection to the board  
29 of directors within 30 days of receipt. The board of directors may  
30 thereafter address the reasons for rejection by the board of  
31 supervisors and submit an amended report and new  
32 recommendations for reauthorization for approval or rejection by  
33 the board of supervisors, unless the district has ceased to exist  
34 pursuant to subdivision (a).

35 (d) If the board of supervisors approves the continuation of the  
36 district, the board shall, by an order entered in its minutes, declare  
37 the district duly extended subject to a majority vote of table grape  
38 growers in the district. The grower vote shall be held pursuant to  
39 Section 6047.77.

1 SEC. 119. Section 27680 of the Food and Agricultural Code  
2 is amended to read:

3 27680. If the grade determination and size determination  
4 required by this chapter ~~or~~ *are* performed at a location outside of  
5 this state, the records relating to eggs of any person registered  
6 under this chapter at that location shall be subject to inspection by  
7 the department as the department considers necessary. The  
8 department may contract with another agency of state government  
9 or with a state department of agriculture or other similar agency  
10 where the out-of-state registrant is domiciled to conduct the  
11 inspection.

12 SEC. 120. Section 27681 of the Food and Agricultural Code  
13 is amended to read:

14 27681. A registrant whose out-of-state location is inspected  
15 shall reimburse the department for actual and necessary expenses  
16 incurred during the inspection. If an out-of-state registrant fails to  
17 pay the expenses before the 11th day on which the registrant  
18 received an invoice from the department, the department may *do*  
19 *any of the following*:

20 (a) Automatically cancel the person's registration.

21 (b) Deny a registration to any person who is connected with a  
22 person whose registration is canceled because of a violation of this  
23 section.

24 (c) Issue an order to stop the sale of all eggs shipped into  
25 California from the registrant.

26 SEC. 121. Section 27686 of the Food and Agricultural Code  
27 is amended to read:

28 27686. All shipped eggs ~~must~~ *shall* be transported under  
29 refrigeration in compliance with California statutes and  
30 regulations.

31 SEC. 122. Section 27690 of the Food and Agricultural Code  
32 is amended to read:

33 27690. All brokers registered with California shall itemize in  
34 their reports a true and complete list of all eggs brokered into and  
35 ~~in~~ *within* California. This list shall include the name and address  
36 of all persons from whom eggs were purchased, to whom they  
37 were sold, and the amount of eggs involved in each transaction.  
38 Furthermore, the broker shall indicate whether the eggs involved  
39 in the transaction were graded or ungraded.



SEC. 123. Section 30801 of the Food and Agricultural Code is amended to read:

30801. (a) A board of supervisors may provide for the issuance of serially numbered metallic dog licenses pursuant to this section. The dog licenses shall be:

(1) Stamped with the name of the county and the year of issue.

(2) (A) Unless the board of supervisors designates the animal control department to issue the licenses, issued by the county clerk, to owners of dogs, ~~that~~ *who* make application.

(B) The board of supervisors or animal control department may authorize veterinarians to issue the licenses to owners of dogs ~~that~~ *who* make application.

(b) The licenses shall be issued for a period ~~of~~ not to exceed two years.

(c) In addition to the authority provided in subdivisions (a) and (b), a license may be issued, as provided by this section, by a board of supervisors for a period not to exceed three years for dogs that have attained the age of 12 months, or older, and who have been vaccinated against rabies. The person to whom the license is to be issued pursuant to this subdivision may choose a license period as established by the board of supervisors of up to one, two, or three years. However, when issuing a license pursuant to this subdivision, the license period shall not extend beyond the remaining period of validity for the current rabies vaccination.

SEC. 124. Section 52489 of the Food and Agricultural Code is amended to read:

52489. It is unlawful for any person to violate the provisions of the United States Plant Variety Protection Act contained in Part J (commencing with Section 2531), Part K (commencing with Section ~~26510~~ 2541), or Part L (commencing with Section 2561) of Subchapter III of Chapter 57 of Title 7 of the United States Code, as enacted.

SEC. 125. Section 65520 of the Food and Agricultural Code is amended to read:

65520. As used in this chapter, the ~~following~~ words *in the following sections* have the following meanings set forth hereafter unless otherwise apparent from the context:

SEC. 126. Section 66572 of the Food and Agricultural Code is amended to read:

1     66572. The commission or the director, in preparing a list of  
2 handlers to be used ~~under~~ *pursuant to* this chapter, may omit from  
3 the list any person who functions as a handler, but who handles less  
4 than 250,000 pounds of iceberg lettuce during a marketing season.  
5 Any person so omitted from the list is not subject to this chapter,  
6 including the payment of any assessments, and is not ~~be~~ qualified  
7 as a handler under this chapter. Any person omitted from a list  
8 pursuant to this section may be included on any subsequent list if  
9 found qualified as a handler at the time of preparing the list.

10    SEC. 127. Section 66663 of the Food and Agricultural Code  
11 is amended to read:

12    66663. After the effective date of suspension of the operation  
13 of the provisions of this chapter and of the commission, as  
14 provided in Section 66662, the operations of the commission shall  
15 be wound up and any moneys remaining held by the commission,  
16 collected by assessment and not required to defray the expenses of  
17 winding up and terminating operations of the commission, shall be  
18 returned upon a pro rata basis to all handlers from whom  
19 assessments were collected in the immediately preceding current  
20 fiscal year. However, if the commission finds that the amounts so  
21 returnable are so de ~~minus~~ *minimis* as to make impractical the  
22 computation and remitting of such pro rata refund to such  
23 handlers, any moneys remaining after payment of all expenses of  
24 winding up and terminating operations shall be withdrawn from  
25 the approved depository and paid into the State Treasury as  
26 unclaimed trust moneys.

27    SEC. 128. Section 74028 of the Food and Agricultural Code  
28 is amended to read:

29    74028. “Producer districts” shall consist of the following:

30    (a) District 1 consists of Lake, Solano, Mendocino, Sonoma,  
31 Marin, and Napa Counties.

32    (b) District 2 consists of the City and County of San Francisco,  
33 *and* Santa Barbara, San Luis Obispo, Ventura, Monterey, San  
34 Benito, Santa Clara, Santa Cruz, Alameda, San Mateo, and Contra  
35 Costa Counties.

36    (c) District 3 consists of Butte, Colusa, Glenn, Sacramento,  
37 Shasta, Tehama, Yolo, Yuba, Trinity, Siskiyou, Modoc, Lassen,  
38 Plumas, Sierra, Sutter, Humboldt, and Del Norte Counties, and  
39 that portion of San Joaquin County north of State Highway 4.

1 (d) District 4 consists of Merced, Stanislaus, Mariposa,  
2 Calaveras, Amador, El Dorado, Placer, Nevada, and ~~Tuolumne~~  
3 *Tuolumne* Counties, and that portion of San Joaquin County south  
4 of State Highway 4.

5 (e) District 5 consists of Fresno, Alpine, Mono, Inyo, and  
6 Madera Counties, and that portion of Kings and Tulare Counties  
7 north of Nevada Avenue (Avenue 192).

8 (f) District 6 consists of Kern County and that portion of Kings  
9 and Tulare Counties south of Nevada Avenue (Avenue 192).

10 (g) District 7 consists of Los Angeles, Orange, Riverside, San  
11 Bernardino, Imperial, and San Diego Counties.

12 SEC. 129. Section 78302 of the Food and Agricultural Code  
13 is amended to read:

14 78302. (a) Upon a finding by a two-thirds vote of the  
15 membership of the commission that the operation of this chapter  
16 has not tended to effectuate its declared purposes, the commission  
17 may recommend to the secretary that the operation of this chapter  
18 be suspended. However, any suspension shall not become  
19 effective until the expiration of the current marketing year.

20 (b) The secretary shall, upon receipt of the recommendation, or  
21 may, after a public hearing to review a petition filed with the  
22 secretary requesting a suspension signed by not less than 20  
23 percent of the producers by number who produced not less than 20  
24 percent of the volume of asparagus in the immediately preceding  
25 marketing year, hold a referendum among the producers to  
26 determine if the operations of the commission shall be suspended.  
27 However, the secretary shall not hold a referendum as a result of  
28 the petition unless the petitioner shows, by a preponderance of  
29 evidence, that the operation of this chapter has not tended to  
30 effectuate its declared purposes.

31 (c) The secretary shall establish a referendum period that shall  
32 not be less than 10 days nor more than 60 days in duration. The  
33 secretary may prescribe additional procedures necessary to  
34 conduct the referendum. At the close of the established  
35 referendum period, the secretary shall tabulate the ballots filed  
36 during the period. The secretary shall suspend the operation of this  
37 chapter if the secretary finds that at least 40 percent of the total  
38 number of producers from the list established by the secretary have  
39 participated in the referendum and either one of the following has  
40 occurred:



(1) Sixty-five ~~percent~~ *percent* or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed a majority of the total quantity of asparagus in the preceding marketing year by all of the producers who voted in the referendum.

(2) A majority of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed 65 percent or more of the total quantity of asparagus in the preceding marketing year by all of the producers who voted in the referendum.

SEC. 130. Section 78690 of the Food and Agricultural Code is amended to read:

78690. (a) Within 15 days of the effective date of this chapter, the secretary shall establish a list of producers and handlers eligible to vote on implementation of this chapter. In establishing the list, the secretary may require that producers and handlers ~~and~~ submit the names and mailing addresses of all producers and handlers. The secretary also may require that the information provided include the quantity of tomatoes produced by each producer and the quantity of tomatoes handled by each handler, or, in the alternative, may establish procedures for receiving the information at the time of the referendum vote specified in Section 78691. The request for the information shall be in writing and shall be filed within 10 days following receipt of the request.

(b) Any producer whose name does not appear on the appropriate list may have his or her name placed on the list by filing with the secretary a signed statement, identifying himself or herself as a producer or handler. Failure to be on the list does not exempt the person from paying assessments, and does not invalidate any industry votes conducted pursuant to this article.

(c) Proponents and opponents of the commission may contact producers on the lists in a form and manner prescribed by the secretary if all expenses associated with those contacts are paid in advance.

SEC. 131. Section 912.8 of the Government Code is amended to read:

912.8. ~~(a)~~ Except as provided in Section 912.7, in the case of claims against the state, the board shall act on claims in accordance with that procedure as the board, by rule, may prescribe. It may hear evidence for and against the claims and, with the approval of

1 the Governor, report to the Legislature those facts and  
2 recommendations concerning the claims as it deems proper. In  
3 making recommendations, the board may state and use any official  
4 or personal knowledge ~~which~~ *that* any member may have  
5 regarding any claim. The board may authorize any employee of the  
6 state to perform the functions of the board under this part as are  
7 prescribed by the board.

8 SEC. 132. Section 1091.4 of the Government Code is  
9 amended to read:

10 1091.4. (a) As used in Section 1091, “remote interest” also  
11 includes a person who has a financial interest in a contract, if all  
12 of the following conditions are met:

13 (1) The agency of which the person is a board member is a  
14 special district serving a population of less than 5,000 that is a  
15 landowner voter district, as defined in Section 56050, that does not  
16 distribute water for any domestic use.

17 (2) The contract is for either of the following:

18 (A) The maintenance or repair of the district’s property or  
19 facilities provided that the need for maintenance or repair services  
20 has been widely advertised. The contract will result in materially  
21 less expense to the district than the expense that would have  
22 resulted under reasonably available alternatives and review of  
23 those alternatives is documented in records available for public  
24 inspection.

25 (B) The acquisition of property that the governing board of the  
26 district has determined is necessary for the district to carry out its  
27 functions at a price not exceeding the value of the property, as  
28 determined in a record available for public inspection by an  
29 appraiser who is a member of a recognized organization of  
30 appraisers.

31 (3) The person did not participate in the formulation of the  
32 contract on behalf of the district.

33 (4) At a public meeting, the governing body of the district, after  
34 review of written documentation, determines that the property  
35 acquisition or maintenance and repair services cannot otherwise be  
36 obtained at a reasonable price; *and* that the contract is in the best  
37 interests of the district, and adopts a resolution stating why the  
38 contract is necessary and in the best interests of the district.

39 (b) If a party to any proceeding challenges any fact or matter  
40 required by paragraph (2), (3), or (4) of subdivision (a) to qualify

1 as a remote interest under subdivision (a), the district shall bear the  
2 burden of proving this fact or matter.

3 SEC. 133. Section 6215 of the Government Code, as added by  
4 Chapter 1637 of the Statutes of 1982, is amended and renumbered  
5 to read:

6 ~~6215.~~

7 6219. (a) Each department, commission, office, or other  
8 administrative agency of state government shall write each  
9 document ~~which~~ *that* it produces in plain, straightforward  
10 language, avoiding technical terms as much as possible, and using  
11 a coherent and easily readable style.

12 (b) As used in this section, a “state agency document” means  
13 any contract, form, license, announcement, regulation, manual,  
14 memorandum, or any other written communication that is  
15 necessary to carry out the agency’s responsibilities under the law.

16 SEC. 134. Section 6254 of the Government Code is amended  
17 to read:

18 6254. Except as provided in Sections 6254.7 and 6254.13,  
19 nothing in this chapter shall be construed to require disclosure of  
20 records that are any of the following:

21 (a) Preliminary drafts, notes, or interagency or intra-agency  
22 memoranda that are not retained by the public agency in the  
23 ordinary course of business, ~~provided that~~ *if* the public interest in  
24 withholding those records clearly outweighs the public interest in  
25 disclosure.

26 (b) Records pertaining to pending litigation to which the public  
27 agency is a party, or to claims made pursuant to Division 3.6  
28 (commencing with Section 810), until the pending litigation or  
29 claim has been finally adjudicated or otherwise settled.

30 (c) Personnel, medical, or similar files, the disclosure of which  
31 would constitute an unwarranted invasion of personal privacy.

32 (d) Contained in or related to any of the following:

33 (1) Applications filed with any state agency responsible for the  
34 regulation or supervision of the issuance of securities or of  
35 financial institutions, including, but not limited to, banks, savings  
36 and loan associations, industrial loan companies, credit unions,  
37 and insurance companies.

38 (2) Examination, operating, or condition reports prepared by,  
39 on behalf of, or for the use of, any state agency referred to in  
40 paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency; or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes; ~~except that.~~ *However*, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. *However*, nothing in this division shall require the disclosure of that portion of those investigative files that ~~reflect~~ *reflects* the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the

1 following information, except to the extent that disclosure of a  
2 particular item of information would endanger the safety of a  
3 person involved in an investigation or would endanger the  
4 successful completion of the investigation or a related  
5 investigation:

6 (1) The full name and occupation of every individual arrested  
7 by the agency, the individual's physical description including date  
8 of birth, color of eyes and hair, sex, height and weight, the time and  
9 date of arrest, the time and date of booking, the location of the  
10 arrest, the factual circumstances surrounding the arrest, the  
11 amount of bail set, the time and manner of release or the location  
12 where the individual is currently being held, and all charges the  
13 individual is being held upon, including any outstanding warrants  
14 from other jurisdictions and parole or probation holds.

15 (2) Subject to the restrictions imposed by Section 841.5 of the  
16 Penal Code, the time, substance, and location of all complaints or  
17 requests for assistance received by the agency and the time and  
18 nature of the response thereto, including, to the extent the  
19 information regarding crimes alleged or committed or any other  
20 incident investigated is recorded, the time, date, and location of  
21 occurrence, the time and date of the report, the name and age of the  
22 victim, the factual circumstances surrounding the crime or  
23 incident, and a general description of any injuries, property, or  
24 weapons involved. The name of a victim of any crime defined by  
25 Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286,  
26 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code  
27 may be withheld at the victim's request, or at the request of the  
28 victim's parent or guardian if the victim is a minor. When a person  
29 is the victim of more than one crime, information disclosing that  
30 the person is a victim of a crime defined by Section 220, 261,  
31 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6,  
32 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the  
33 request of the victim, or the victim's parent or guardian if the  
34 victim is a minor, in making the report of the crime, or of any crime  
35 or incident accompanying the crime, available to the public in  
36 compliance with the requirements of this paragraph.

37 (3) Subject to the restrictions of Section 841.5 of the Penal  
38 Code and this subdivision, the current address of every individual  
39 arrested by the agency and the current address of the victim of a  
40 crime, where the requester declares under penalty of perjury that

1 the request is made for a scholarly, journalistic, political, or  
 2 governmental purpose, or that the request is made for investigation  
 3 purposes by a licensed private investigator as described in Chapter  
 4 11.3 (commencing with Section 7512) of Division 3 of the  
 5 Business and Professions Code, ~~except that.~~ *However*, the address  
 6 of the victim of any crime defined by Section 220, 261, 261.5, 262,  
 7 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7,  
 8 422.75, or 646.9 of the Penal Code shall remain confidential.  
 9 Address information obtained pursuant to this paragraph shall not  
 10 be used directly or indirectly to sell a product or service to any  
 11 individual or group of individuals, and the requester shall execute  
 12 a declaration to that effect under penalty of perjury.

13 (g) Test questions, scoring keys, and other examination data  
 14 used to administer a licensing examination, examination for  
 15 employment, or academic examination, except as provided for in  
 16 Chapter 3 (commencing with Section 99150) of Part 65 of the  
 17 Education Code.

18 (h) The contents of real estate appraisals or engineering or  
 19 feasibility estimates and evaluations made for or by the state or  
 20 local agency relative to the acquisition of property, or to  
 21 prospective public supply and construction contracts, until all of  
 22 the property has been acquired or all of the contract agreement  
 23 obtained. However, the law of eminent domain shall not be  
 24 affected by this provision.

25 (i) Information required from any taxpayer in connection with  
 26 the collection of local taxes that is received in confidence and the  
 27 disclosure of the information to other persons would result in  
 28 unfair competitive disadvantage to the person supplying the  
 29 information.

30 (j) Library circulation records kept for the purpose of  
 31 identifying the borrower of items available in libraries, and library  
 32 and museum materials made or acquired and presented solely for  
 33 reference or exhibition purposes. The exemption in this  
 34 subdivision shall not apply to records of fines imposed on the  
 35 borrowers.

36 (k) Records, the disclosure of which is exempted or prohibited  
 37 pursuant to federal or state law, including, but not limited to,  
 38 provisions of the Evidence Code relating to privilege.

39 (l) Correspondence of and to the Governor or employees of the  
 40 Governor's office or in the custody of or maintained by the



1 Governor's Legal Affairs Secretary, ~~provided that~~. *However,*  
2 public records shall not be transferred to the custody of the  
3 Governor's Legal Affairs Secretary to evade the disclosure  
4 provisions of this chapter.

5 (m) In the custody of or maintained by the Legislative Counsel,  
6 except those records in the public database maintained by the  
7 Legislative Counsel that are described in Section 10248.

8 (n) Statements of personal worth or personal financial data  
9 required by a licensing agency and filed by an applicant with the  
10 licensing agency to establish his or her personal qualification for  
11 the license, certificate, or permit applied for.

12 (o) Financial data contained in applications for financing under  
13 Division 27 (commencing with Section 44500) of the Health and  
14 Safety Code, where an authorized officer of the California  
15 Pollution Control Financing Authority determines that disclosure  
16 of the financial data would be competitively injurious to the  
17 applicant and the data is required in order to obtain guarantees  
18 from the United States Small Business Administration. The  
19 California Pollution Control Financing Authority shall adopt rules  
20 for review of individual requests for confidentiality under this  
21 section and for making available to the public those portions of an  
22 application that are subject to disclosure under this chapter.

23 (p) Records of state agencies related to activities governed by  
24 Chapter 10.3 (commencing with Section 3512), Chapter 10.5  
25 (commencing with Section 3525), and Chapter 12 (commencing  
26 with Section 3560) of Division 4 of Title 1, that reveal a state  
27 agency's deliberative processes, impressions, evaluations,  
28 opinions, recommendations, meeting minutes, research, work  
29 products, theories, or strategy, or that provide instruction, advice,  
30 or training to employees who do not have full collective bargaining  
31 and representation rights under these chapters. Nothing in this  
32 subdivision shall be construed to limit the disclosure duties of a  
33 state agency with respect to any other records relating to the  
34 activities governed by the employee relations acts referred to in  
35 this subdivision.

36 (q) Records of state agencies related to activities governed by  
37 Article 2.6 (commencing with Section 14081), Article 2.8  
38 (commencing with Section 14087.5), and Article 2.91  
39 (commencing with Section 14089) of Chapter 7 of Part 3 of  
40 Division 9 of the Welfare and Institutions Code, that reveal the





1 special negotiator's deliberative processes, discussions,  
2 communications, or any other portion of the negotiations with  
3 providers of health care services, impressions, opinions,  
4 recommendations, meeting minutes, research, work product,  
5 theories, or strategy, or that provide instruction, advice, or training  
6 to employees.

7 Except for the portion of a contract containing the rates of  
8 payment, contracts for inpatient services entered into pursuant to  
9 these articles, on or after April 1, 1984, shall be open to inspection  
10 one year after they are fully executed. ~~In the event that~~ If a contract  
11 for inpatient services that is entered into prior to April 1, 1984, is  
12 amended on or after April 1, 1984, the amendment, except for any  
13 portion containing the rates of payment, shall be open to inspection  
14 one year after it is fully executed. If the California Medical  
15 Assistance Commission enters into contracts with health care  
16 providers for other than inpatient hospital services, those contracts  
17 shall be open to inspection one year after they are fully executed.

18 Three years after a contract or amendment is open to inspection  
19 under this subdivision, the portion of the contract or amendment  
20 containing the rates of payment shall be open to inspection.

21 Notwithstanding any other provision of law, the entire contract  
22 or amendment shall be open to inspection by the Joint Legislative  
23 Audit Committee. The committee shall maintain the  
24 confidentiality of the contracts and amendments until the time a  
25 contract or amendment is fully open to inspection by the public.

26 (r) Records of Native American graves, cemeteries, and sacred  
27 places maintained by the Native American Heritage Commission.

28 (s) A final accreditation report of the Joint Commission on  
29 Accreditation of Hospitals that has been transmitted to the State  
30 Department of Health Services pursuant to subdivision (b) of  
31 Section 1282 of the Health and Safety Code.

32 (t) Records of a local hospital district, formed pursuant to  
33 Division 23 (commencing with Section 32000) of the Health and  
34 Safety Code, or the records of a municipal hospital, formed  
35 pursuant to Article 7 (commencing with Section 37600) or Article  
36 8 (commencing with Section 37650) of Chapter 5 of Division 3 of  
37 Title 4 of this code, that relate to any contract with an insurer or  
38 nonprofit hospital service plan for inpatient or outpatient services  
39 for alternative rates pursuant to Section 10133 or 11512 of the

1 Insurance Code. However, the record shall be open to inspection  
2 within one year after the contract is fully executed.

3 (u) (1) Information contained in applications for licenses to  
4 carry firearms issued pursuant to Section 12050 of the Penal Code  
5 by the sheriff of a county or the chief or other head of a municipal  
6 police department that indicates when or where the applicant is  
7 vulnerable to attack or that concerns the applicant's medical or  
8 psychological history or that of members of his or her family.

9 (2) The home address and telephone number of peace officers,  
10 judges, court commissioners, and magistrates that are set forth in  
11 applications for licenses to carry firearms issued pursuant to  
12 Section 12050 of the Penal Code by the sheriff of a county or the  
13 chief or other head of a municipal police department.

14 (3) The home address and telephone number of peace officers,  
15 judges, court commissioners, and magistrates that are set forth in  
16 licenses to carry firearms issued pursuant to Section 12050 of the  
17 Penal Code by the sheriff of a county or the chief or other head of  
18 a municipal police department.

19 (v) (1) Records of the Major Risk Medical Insurance Program  
20 related to activities governed by Part 6.3 (commencing with  
21 Section 12695) and Part 6.5 (commencing with Section 12700) of  
22 Division 2 of the Insurance Code, and that reveal the deliberative  
23 processes, discussions, communications, or any other portion of  
24 the negotiations with health plans, or the impressions, opinions,  
25 recommendations, meeting minutes, research, work product,  
26 theories, or strategy of the board or its staff, or records that provide  
27 instructions, advice, or training to employees.

28 (2) (A) Except for the portion of a contract that contains the  
29 rates of payment, contracts for health coverage entered into  
30 pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5  
31 (commencing with Section 12700) of Division 2 of the Insurance  
32 Code, on or after July 1, 1991, shall be open to inspection one year  
33 after they have been fully executed.

34 (B) In the event that a contract for health coverage that is  
35 entered into prior to July 1, 1991, is amended on or after July 1,  
36 1991, the amendment, except for any portion containing the rates  
37 of payment, shall be open to inspection one year after the  
38 amendment has been fully executed.

39 (3) Three years after a contract or amendment is open to  
40 inspection pursuant to this subdivision, the portion of the contract

1 or amendment containing the rates of payment shall be open to  
2 inspection.

3 (4) Notwithstanding any other provision of law, the entire  
4 contract or amendments to a contract shall be open to inspection  
5 by the Joint Legislative Audit Committee. The committee shall  
6 maintain the confidentiality of the contracts and amendments  
7 thereto, until the contract or amendments to a contract is open to  
8 inspection pursuant to paragraph (3).

9 (w) (1) Records of the Major Risk Medical Insurance Program  
10 related to activities governed by Chapter 14 (commencing with  
11 Section 10700) of Part 2 of Division 2 of the Insurance Code, and  
12 that reveal the deliberative processes, discussions,  
13 communications, or any other portion of the negotiations with  
14 health plans, or the impressions, opinions, recommendations,  
15 meeting minutes, research, work product, theories, or strategy of  
16 the board or its staff, or records that provide instructions, advice,  
17 or training to employees.

18 (2) Except for the portion of a contract that contains the rates  
19 of payment, contracts for health coverage entered into pursuant to  
20 Chapter 14 (commencing with Section 10700) of Part 2 of  
21 Division 2 of the Insurance Code, on or after January 1, 1993, shall  
22 be open to inspection one year after they have been fully executed.

23 (3) Notwithstanding any other provision of law, the entire  
24 contract or amendments to a contract shall be open to inspection  
25 by the Joint Legislative Audit Committee. The committee shall  
26 maintain the confidentiality of the contracts and amendments  
27 thereto, until the contract or amendments to a contract is open to  
28 inspection pursuant to paragraph (2).

29 (x) Financial data contained in applications for registration, or  
30 registration renewal, as a service contractor filed with the Director  
31 of ~~the Department of~~ Consumer Affairs pursuant to Chapter 20  
32 (commencing with Section 9800) of Division 3 of the Business and  
33 Professions Code, for the purpose of establishing the service  
34 contractor's net worth, or financial data regarding the funded  
35 accounts held in escrow for service contracts held in force in this  
36 state by a service contractor.

37 (y) (1) Records of the Managed Risk Medical Insurance Board  
38 related to activities governed by Part 6.2 (commencing with  
39 Section 12693) or Part 6.4 (commencing with Section 12699.50)  
40 of Division 2 of the Insurance Code, and that reveal the

1 deliberative processes, discussions, communications, or any other  
2 portion of the negotiations with health plans, or the impressions,  
3 opinions, recommendations, meeting minutes, research, work  
4 product, theories, or strategy of the board or its staff, or records  
5 that provide instructions, advice, or training to employees.

6 (2) (A) Except for the portion of a contract that contains the  
7 rates of payment, contracts entered into pursuant to Part 6.2  
8 (commencing with Section 12693) or Part 6.4 (commencing with  
9 Section 12699.50) of Division 2 of the Insurance Code, on or after  
10 January 1, 1998, shall be open to inspection one year after they  
11 have been fully executed.

12 (B) In the event that a contract entered into pursuant to Part 6.2  
13 (commencing with Section 12693) or Part 6.4 (commencing with  
14 Section 12699.50) of Division 2 of the Insurance Code is amended,  
15 the amendment shall be open to inspection one year after the  
16 amendment has been fully executed.

17 (3) Three years after a contract or amendment is open to  
18 inspection pursuant to this subdivision, the portion of the contract  
19 or amendment containing the rates of payment shall be open to  
20 inspection.

21 (4) Notwithstanding any other provision of law, the entire  
22 contract or amendments to a contract shall be open to inspection  
23 by the Joint Legislative Audit Committee. The committee shall  
24 maintain the confidentiality of the contracts and amendments  
25 thereto until the contract or amendments to a contract are open to  
26 inspection pursuant to paragraph (2) or (3).

27 (5) The exemption from disclosure provided pursuant to this  
28 subdivision for the contracts, deliberative processes, discussions,  
29 communications, negotiations with health plans, impressions,  
30 opinions, recommendations, meeting minutes, research, work  
31 product, theories, or strategy of the board or its staff shall also  
32 apply to the contracts, deliberative processes, discussions,  
33 communications, negotiations with health plans, impressions,  
34 opinions, recommendations, meeting minutes, research, work  
35 product, theories, or strategy of applicants pursuant to Part 6.4  
36 (commencing with Section 12699.50) of Division 2 of the  
37 Insurance Code.

38 (z) Records obtained pursuant to paragraph (2) of subdivision  
39 (c) of Section 2891.1 of the Public Utilities Code.



1 (aa) A document prepared by or for a state or local agency that  
2 assesses its vulnerability to terrorist attack or other criminal acts  
3 intended to disrupt the public agency's operations and that is for  
4 distribution or consideration in a closed session.

5 (bb) (1) Records of the Managed Risk Medical Insurance  
6 Board related to activities governed by Part 8.7 (commencing with  
7 Section 2120) of Division 2 of the Labor Code, and that reveal the  
8 deliberative processes, discussions, communications, or any other  
9 portion of the negotiations with entities contracting or seeking to  
10 contract with the board, or the impressions, opinions,  
11 recommendations, meeting minutes, research, work product,  
12 theories, or strategy of the board or its staff, or records that provide  
13 instructions, advice, or training to employees.

14 (2) (A) Except for the portion of a contract that contains the  
15 rates of payment, contracts entered into pursuant to Part 8.7  
16 (commencing with Section 2120) of Division 2 of the Labor Code  
17 on or after January 1, 2004, shall be open to inspection one year  
18 after they have been fully executed.

19 (B) In the event that a contract entered into pursuant to Part 8.7  
20 (commencing with Section 2120) of Division 2 of the Labor Code  
21 is amended, the amendment shall be open to inspection one year  
22 after the amendment has been fully executed.

23 (3) Three years after a contract or amendment is open to  
24 inspection pursuant to this subdivision, the portion of the contract  
25 or amendment containing the rates of payment shall be open to  
26 inspection.

27 (4) Notwithstanding any other provision of law, the entire  
28 contract or amendments to a contract shall be open to inspection  
29 by the Joint Legislative Audit Committee. The committee shall  
30 maintain the confidentiality of the contracts and amendments  
31 thereto until the contract or amendments to a contract are open to  
32 inspection pursuant to paragraph (2) or (3).

33 Nothing in this section prevents any agency from opening its  
34 records concerning the administration of the agency to public  
35 inspection, unless disclosure is otherwise prohibited by law.

36 Nothing in this section prevents any health facility from  
37 disclosing to a certified bargaining agent relevant financing  
38 information pursuant to Section 8 of the National Labor Relations  
39 Act (*Section 158 of Subchapter II of Chapter 7 of Title 29 of the*  
40 *United States Code*).

1 SEC. 135. Section 6254.17 of the Government Code is  
2 amended to read:

3 6254.17. (a) Nothing in this chapter shall be construed to  
4 require disclosure of records of the ~~State Board of Control~~  
5 *California Victim Compensation and Government Claims Board*  
6 that relate to a request for assistance under Article 1 (commencing  
7 with Section ~~13959~~ 13950) of Chapter 5 of Part 4 of Division 3  
8 of Title 2.

9 (b) This section shall not apply to a disclosure of the following  
10 information, if no information is disclosed that connects the  
11 information to a specific victim, derivative victim, or applicant  
12 under Article 1 (commencing with Section ~~13959~~ 13950) of  
13 Chapter 5 of Part 4 of Division 3 of Title 2:

14 (1) The amount of money paid to a specific provider of  
15 services.

16 (2) Summary data concerning the types of crimes for which  
17 assistance is provided.

18 SEC. 136. Section 7072 of the Government Code is amended  
19 to read:

20 7072. For purposes of this chapter, the following definitions  
21 shall apply:

22 (a) “Agency” means the Department of Housing and  
23 Community Development.

24 (b) “Date of original designation” means the earlier of the  
25 following:

26 (1) The date the eligible area receives designation as an  
27 enterprise zone by the agency pursuant to this chapter.

28 (2) In the case of an enterprise zone deemed designated  
29 pursuant to subdivision (e) of Section 7073, the date the enterprise  
30 zone or program area received original designation by the agency  
31 pursuant to Chapter 12.8 (commencing with Section 7070) or  
32 Chapter 12.9 (commencing with Section 7080), as those chapters  
33 read prior to January 1, 1997.

34 (c) “Eligible area” means any of the following:

35 (1) An area designated as an enterprise zone pursuant to  
36 Chapter 12.8 (commencing with Section 7070), as it read prior to  
37 January 1, 1997, or as a targeted economic development area,  
38 neighborhood development area, or program area pursuant to  
39 Chapter 12.9 (commencing with Section 7080), as it read prior to  
40 January 1, 1997.

1 (2) A geographic area that, based upon the determination of the  
2 agency, fulfills at least one of the following:

3 (A) The proposed geographic area meets the Urban  
4 Development Action Grant criteria of the United States  
5 Department of Housing and Urban Development.

6 (B) The area within the proposed zone has experienced plant  
7 closures within the past two years affecting more than 100  
8 workers.

9 (C) The city or county has submitted material to the agency for  
10 a finding that the proposed geographic area meets criteria of  
11 economic distress related to those used in determining eligibility  
12 under the Urban Development Action Grant Program and is  
13 therefore an eligible area.

14 (D) The area within the proposed zone has a history of  
15 gang-related activity, whether or not crimes of violence have been  
16 committed.

17 (3) A geographic area that meets at least two of the following  
18 criteria:

19 (A) The census tracts within the proposed zone have an  
20 unemployment rate not less than 3 percentage points above the  
21 statewide average for the most recent calendar year as determined  
22 by the Employment Development Department.

23 (B) The county of the proposed zone has more than 70 percent  
24 of the children enrolled in public school participating in the federal  
25 free lunch program.

26 (C) The median household income for a family of four within  
27 the census tracts of the proposed zone does not exceed 80 percent  
28 of the statewide median income for the most recently available  
29 calendar year.

30 (d) "Enterprise zone" means any area within a city, county, or  
31 city and county that is designated as ~~such an enterprise zone~~ by the  
32 agency in accordance with ~~the provisions of~~ Section 7073.

33 (e) "Governing body" means a county board of supervisors or  
34 a city council, as appropriate.

35 (f) "High technology industries" include, but are not limited  
36 to, the computer, biological engineering, electronics, and  
37 telecommunications industries.

38 (g) "Resident," unless otherwise defined, means a person  
39 whose principal place of residence is within a targeted  
40 employment area.



1 (h) “Targeted employment area” means an area within a city,  
2 county, or city and county that is composed solely of those census  
3 tracts designated by the United States Department of Housing and  
4 Urban Development as having at least 51 percent of its residents  
5 of low- or moderate-income levels, using either the most recent  
6 United States Department of Census data available at the time of  
7 the original enterprise zone application or the most recent census  
8 data available at the time the targeted employment area is  
9 designated to determine that eligibility. The purpose of a “targeted  
10 employment area” is to encourage businesses in an enterprise zone  
11 to hire eligible residents of certain geographic areas within a city,  
12 county, or city and county. A targeted employment area may be,  
13 but is not required to be, the same as all or part of an enterprise  
14 zone. A targeted employment area’s boundaries need not be  
15 contiguous. A targeted employment area does not need to  
16 encompass each eligible census tract within a city, county, or city  
17 and county. The governing body of each city, county, or city and  
18 county that has jurisdiction of the enterprise zone shall identify  
19 those census tracts whose residents are in the most need of this  
20 employment targeting. Only those census tracts within the  
21 jurisdiction of the city, county, or city and county that has  
22 jurisdiction of the enterprise zone may be included in a targeted  
23 employment area.

24 At least a part of each eligible census tract within a targeted  
25 employment area shall be within the territorial jurisdiction of the  
26 city, county, or city and county that has jurisdiction for an  
27 enterprise zone. If an eligible census tract encompasses the  
28 territorial jurisdiction of two or more local governmental entities,  
29 all of those entities shall be a party to the designation of a targeted  
30 employment area. However, any one or more of those entities, by  
31 resolution or ordinance, may specify that it shall not participate in  
32 the application as an applicant, but shall agree to complete all  
33 actions stated within the application that apply to its jurisdiction,  
34 if the area is designated.

35 Each local governmental entity of each city, county, or city and  
36 county that has jurisdiction of an enterprise zone shall approve, by  
37 resolution or ordinance, the boundaries of its targeted employment  
38 area, regardless of whether a census tract within the proposed  
39 targeted employment area is outside the jurisdiction of the local  
40 governmental entity.



1 SEC. 137. Section 8220 of the Government Code is amended  
2 to read:

3 8220. The Secretary of State may adopt rules and regulations  
4 to carry out the provisions of this chapter.

5 The regulations shall be adopted in accordance with the  
6 Administrative Procedure Act, ~~Chapter 4.5~~ (*Chapter 3.5*  
7 (commencing with Section ~~11371~~) *11340*) of Part 1 of Division 3  
8 of this title 3).

9 SEC. 138. Section 8592.4 of the Government Code is  
10 amended to read:

11 8592.4. (a) The committee shall determine which agencies  
12 need new or upgraded communication equipment and shall  
13 establish a program for equipment purchase. In establishing this  
14 program, the board shall recommend the purchase of, equipment  
15 that will enable state agencies to commence conforming to  
16 accepted industry standards for interoperability consistent with the  
17 public safety digital communications standards of the American  
18 National Standards Institute and the Telecommunications  
19 Information Association.

20 (b) This section may not be construed to mandate that a state or  
21 local governmental agency affected thereby is required to  
22 compromise its immediate mission or ability to function and carry  
23 out its existing responsibilities.

24 SEC. 139. Section 8869.84 of the Government Code is  
25 amended to read:

26 8869.84. (a) The committee shall, as soon as is practicable  
27 after the start of each calendar year, determine and announce the  
28 state ceiling for the calendar year.

29 (b) The entire state ceiling for each calendar year is hereby  
30 allocated to the committee to further allocate to state and local  
31 agencies as provided in this chapter.

32 (c) The committee shall prepare application forms and  
33 announce procedures for receipt and review of applications from  
34 state and local agencies desiring to issue private activity bonds.

35 (d) The committee may at any time, before or after granting any  
36 allocations in any calendar year to any state agencies or local  
37 agencies, announce priorities or reservations of any part of the  
38 state ceiling not theretofore allocated either for certain categories  
39 of bonds or categories of issuers.

1 (e) The committee may require any issuer making an  
2 application to the committee or MBTCAC for allocation of a  
3 portion of the state ceiling to make a deposit, as determined by the  
4 committee, of up to 1 percent of the portion requested. If an  
5 allocation is not given, the deposit shall be returned. If an  
6 allocation is given, the deposit shall be kept ~~(in, in~~ in proportion to  
7 the amount of allocation ~~given)~~ given, until bonds are issued. Upon  
8 that issuance, the deposit shall be returned to the issuer in an  
9 amount equal to the product of (1) the amount of the deposit  
10 retained times (2) the ratio between the amount of bonds issued  
11 divided by the amount of allocation granted. If no bonds are issued  
12 prior to the expiration of the allocation, the deposit shall be kept,  
13 unless the committee determines there is good cause to return all  
14 or part of the deposit. Any portion of a deposit kept shall be  
15 deposited in the fund.

16 (f) The committee may transfer part of the state ceiling to the  
17 MBTCAC, to be used for qualified mortgage bonds and exempt  
18 facility bonds, ~~as those terms are used in the Internal Revenue~~  
19 ~~Code, or~~ for qualified residential rental projects, as those terms are  
20 used in the Internal Revenue Code, ~~(together together~~ referred to  
21 as “housing ~~bonds~~”); *bonds*,” with directions and conditions  
22 pursuant to which MBTCAC may allocate those amounts to  
23 issuers of housing bonds at both the state and local ~~level~~ levels. In  
24 carrying out these functions, MBTCAC shall act solely as directed  
25 or authorized by the committee. If the committee makes the  
26 transfer to MBTCAC authorized by this subdivision, the  
27 references in Sections 8869.85, 8869.86, 8869.87, and 8869.88 to  
28 the “committee” shall, for purposes of any housing bonds, be  
29 deemed to mean MBTCAC.

30 (g) (1) The committee may establish the Extra Credit Teacher  
31 Home Purchase Program to provide federal mortgage credit  
32 certificates and reduced interest rate loans funded by mortgage  
33 revenue bonds to eligible teachers, principals, vice principals,  
34 assistant principals, and classified employees; who agree to teach  
35 or provide administration or service in a high priority school.  
36 Priority for assistance shall be given to eligible teachers,  
37 principals, vice principals, and assistant principals.

38 (2) For purposes of this program, the following definitions  
39 shall apply:

1 (A) “High priority school” means a state K-12 public school  
2 that is ranked in the bottom half of the Academic Performance  
3 Index developed pursuant to subdivision (a) of Section 52052 of  
4 the Education Code. However, priority shall be given to schools  
5 that are ranked in the lowest three deciles.

6 (B) “Classified employee” means an employee of a school  
7 district, employed in a position not requiring certification  
8 qualifications.

9 (3) The committee may make reservations of a portion of future  
10 calendar year state ceiling limits for up to five future calendar  
11 years for that program. The committee may also make future  
12 allocations of the state ceiling for up to five years for any issuer  
13 under that program. Any future allocation made by the committee  
14 shall constitute an allocation of the state ceiling for a future year  
15 specified by the committee and shall be deemed to have been made  
16 on the first day of the future year so specified. The committee may  
17 condition allocations under the Extra Credit Teacher Home  
18 Purchase Program on any terms and conditions that the committee  
19 deems necessary or appropriate, including, but not limited to, the  
20 execution of a contract between the teacher, principal, vice  
21 principal, assistant principal, or classified employee and the issuer  
22 whereby the teacher, principal, vice principal, assistant principal,  
23 or classified employee agrees to comply with the terms and  
24 conditions of the program. The contract may include, among other  
25 things, an agreement by the teacher, principal, vice principal,  
26 assistant principal, or classified employee to teach or provide  
27 administration or service in a high priority school for a minimum  
28 number of years, and provisions for enforcing the contract that the  
29 committee deems necessary or appropriate.

30 (4) If a teacher, principal, vice principal, assistant principal, or  
31 classified employee does not fulfill the requirements of a contract  
32 entered into pursuant to paragraph (3), the issuer of the mortgage  
33 credit certificate or mortgage revenue bond may recover as an  
34 assessment from the teacher, principal, vice principal, assistant  
35 principal, or classified employee a monetary amount equal to the  
36 lesser of (A) one-half of the teacher’s, principal’s, vice principal’s,  
37 assistant principal’s, or classified employee’s net proceeds from  
38 the sale of the related residence or (B) the amount of monetary  
39 benefit conferred on the teacher, principal, vice principal, assistant  
40 principal, or classified employee as a result of the federal mortgage

1 credit certificate or reduced interest rate loan funded by a mortgage  
2 revenue bond, offset by the amount of any federal recapture, as  
3 defined by Section 143(m) of the Internal Revenue Code. The  
4 assessment may be secured by a lien against the residence, which  
5 shall decline in amount over the term of the contract as the teacher,  
6 principal, vice principal, assistant principal, or classified  
7 employee fulfills the term of the contract, and which shall be  
8 collected at the time of sale of the residence. Any assessment  
9 collected pursuant to this paragraph shall be used for the issuer's  
10 costs in administering the Extra Credit Teacher Home Purchase  
11 Program. The issuers shall report annually to the committee the  
12 total amount of any assessments collected pursuant to this  
13 paragraph and how those assessments were used by the issuer.

14 (5) If the committee establishes the Extra Credit Teacher Home  
15 Purchase Program pursuant to this subdivision, the committee  
16 shall report annually to the Legislature the results of the program,  
17 including all of the following:

18 (A) The amount of state ceiling limits allocated to or reserved  
19 for the program.

20 (B) The agencies to which state ceiling limits were issued.

21 (C) The number of loans or mortgage credit certificates issued  
22 to teachers, principals, vice principals, assistant principals, and  
23 classified employees.

24 (D) The schools or school districts at which recipients of  
25 assistance are employed, aggregated by decile in which the schools  
26 rank on the Academic Performance Index and by the percentage  
27 of uncredentialed teachers employed at the schools.

28 (6) The committee shall not make any reservations of future  
29 calendar year state ceiling limits or future allocations of the state  
30 ceiling pursuant to this subdivision on or after January 1, 2004,  
31 unless a later enacted statute, that is enacted before January 1,  
32 2004, deletes or extends that date. However, reservations and  
33 allocations made prior to that date shall remain valid.

34 SEC. 140. Section 8880.325 of the Government Code is  
35 amended to read:

36 8880.325. The right of any person to a prize shall not be  
37 assignable, except that the payment of any prize may be assigned,  
38 in whole or in part, as provided by Section 8880.326 and this  
39 section under any of the following circumstances:

1 (a) An assignment executed by the prizewinner on a form  
2 approved by, and filed with, the commission during the  
3 prizewinner's lifetime in accordance with regulations adopted by  
4 the commission, to a trust that by its terms is revocable and that is  
5 established by the prizewinner for the benefit of the prizewinner  
6 as a beneficiary and governed by the laws of the state.

7 (b) An appropriate judicial order appointing a conservator or a  
8 guardian for the protection of the prizewinner or for adjudicating  
9 rights to, or ownership of, the prize.

10 (c) An assignment, as collateral, to a person to secure a loan  
11 pursuant to Division 9 (commencing with Section 9101) of the  
12 Commercial Code. The assignment as collateral of the right to  
13 receive payment of a prize shall be subject to all of the following:

14 (1) All security agreements, rights of the prizewinner, and  
15 rights of the secured creditor shall be determined pursuant to the  
16 laws of the state.

17 (2) In the event of a default under the loan or security  
18 agreement, the secured creditor's rights shall be limited to  
19 receiving the regular payments made by the lottery, based on the  
20 prizewinner's right to receive a regular prize payment until the  
21 obligation has been paid in full or the prize has been paid in full,  
22 whichever occurs first. Notwithstanding Division 9 (commencing  
23 with Section 9101) of the Commercial Code, the secured creditor  
24 shall not have the right to sell or assign the prizewinner's rights to  
25 payments to itself or to any other person. This section shall not  
26 limit the secured creditor's right to sell, assign, or transfer the  
27 obligation of the debtor and related security interest to a third  
28 party.

29 (3) The prizewinner and secured creditor may agree, and may  
30 jointly instruct the lottery, to directly deposit all prizewinning  
31 payments into an account maintained by the prizewinner at a  
32 federally insured financial institution located within the state. This  
33 account may be subject to the secured creditor's lien. Upon receipt  
34 of these instructions, the lottery shall continue to deposit all  
35 payments due the prizewinner into the account until the lottery  
36 receives notification from both the secured creditor and the  
37 prizewinner that the payments are to be made to an account  
38 maintained at another bank or that the secured creditor releases or  
39 terminates the security interest in the prizewinner's payments.

1 (4) (A) The prizewinner, pursuant to an order of the court  
2 obtained in compliance with subdivision (d), may direct the lottery  
3 to make the prize payments, in whole or in part, directly to the  
4 secured creditor. A direction to the lottery to make a prize payment  
5 to a secured creditor shall not, in itself, constitute an assignment  
6 of the prize payment to the secured creditor.

7 (B) For purposes of this paragraph and subdivision (d),  
8 “assignee” and “secured creditor” are synonymous, and  
9 “assignment” or “prize payment” means the payment that is  
10 directed to be paid to the secured creditor.

11 (5) For purposes of perfecting the security interest of the  
12 secured creditor, the right of the prizewinner to receive payments  
13 is deemed to be a contract right that is perfected by the filing of a  
14 financing statement with the office of the Secretary of State.

15 (6) A copy of the security agreement, an endorsed copy of the  
16 financing statement, and the joint instruction to deposit the  
17 prizewinner’s payments directly into an account, if any, at the  
18 financial institution shall be filed with the lottery. Notwithstanding  
19 the security interest granted a creditor, all lottery payments shall  
20 be made payable directly to the prizewinner, except as follows:

21 (A) Payments sent directly to the financial institution  
22 designated pursuant to paragraph (3).

23 (B) In the event of a default under the security agreement or  
24 obligation it secures, payments sent directly to the secured creditor  
25 pursuant to an order of a court of competent jurisdiction  
26 determining that the payments are to be made directly to the  
27 secured creditor.

28 (7) Upon the termination or release of the security interest, the  
29 secured creditor shall file an endorsed copy of the release or  
30 termination of the security interest with the lottery.

31 (d) Except as provided in subdivision (j), an assignment of  
32 future payments to another person designated pursuant to an  
33 appropriate judicial order of a California superior court or a federal  
34 court having jurisdiction over property located within California,  
35 if the court determines and states in its order all of the following:

36 (1) That the prizewinner was represented by independent legal  
37 counsel whose name and State Bar of California number appears  
38 as counsel of record on all pleadings filed in any and all court  
39 proceedings. The prizewinner’s legal counsel shall appear as  
40 counsel of record at any proceedings that are required by the court.



1 (2) That the prizewinner has represented to the court either by  
2 sworn testimony if a personal appearance is required by the court,  
3 or by written declaration filed with the court under penalty of  
4 perjury, and that the court has determined these representations to  
5 be true and correct, that the prizewinner (A) has reviewed and  
6 understands the terms and effects of the assignment, (B)  
7 understands that he or she will not receive the prize payments or  
8 portions thereof for the years assigned, (C) has entered into the  
9 agreement of his or her own free will without undue influence or  
10 duress and not under the influence of drugs or alcohol, (D) has had  
11 an opportunity to retain independent financial and tax advice, and  
12 (E) has been represented by independent legal counsel, who has  
13 advised the prizewinner of his or her legal rights and obligations  
14 under the assignment.

15 (3) It shall be the responsibility of the prizewinner to bring to  
16 the attention of the court, either by sworn testimony or by written  
17 declaration submitted under penalty of perjury, the existence or  
18 nonexistence of a current spouse. If married, the prizewinner shall  
19 identify his or her spouse and submit to the court a signed and  
20 notarized statement wherein the spouse consents to the  
21 assignment. If the prizewinner is married and the ~~notarized~~  
22 *notarized* statement is not presented to the court, the court shall  
23 determine, to the extent necessary and as appropriate under  
24 applicable law, the ability of the prizewinner to make the proposed  
25 assignment without the spouse's consent.

26 (4) The specific prize payment or payments assigned, or any  
27 portion thereof, including the dates and amounts of the payments  
28 to be assigned, the years in which each payment is to begin and end,  
29 the gross amount of the annual payments assigned before taxes, the  
30 prizewinner's name as it appears on the lottery claim form, the full  
31 legal name of the assignor if different than the prizewinner's name  
32 as it appears on the lottery claim form, the assignor's social  
33 security or tax identification number, the assignee's full legal name  
34 and social security or tax identification number, and, if applicable,  
35 the citizenship or resident alien number of the assignee if a natural  
36 person.

37 (5) Expressly identifies the amount, the date if available, any  
38 nonspouse coowner, claimant, or lienholder, and the interests,  
39 liens, security interests, assignments, or offsets asserted by the  
40 state or other persons against any of the prize payments, including,

1 but not limited to, those payments that are the subject of the  
2 proposed assignment as those interests, liens, security interests,  
3 assignments, or offsets have been represented to the court by the  
4 prizewinner in a written declaration signed under penalty of  
5 perjury and filed with the court.

6 (6) That the lottery and the State of California are not parties  
7 to the proceeding and that the lottery and the state may rely upon  
8 the order in disbursing the prize payments that are the subject of  
9 the order. Further, that upon payment of prize moneys pursuant to  
10 an order of the court, the lottery, the director, the commission, and  
11 the employees of the lottery and the state shall be discharged of any  
12 and all liability for the prize paid, and these persons and entities  
13 shall have no duty or obligation to any person asserting another  
14 interest in, or right to receive, the prize payment.

15 (7) That the prizewinner or the proposed assignee has obtained  
16 and filed with the court a notification from the lottery of any liens,  
17 levies, or claims, and the Controller's office of any offsets asserted  
18 as of that time against the prizewinner, as reflected in their  
19 respective official records as of the time of the notification. The  
20 date of the notification shall not be more than 20 days prior to the  
21 court hearing, unless extended by the court.

22 (e) The assignment of the right to receive any prize payment or  
23 payments by the prizewinner pursuant to subdivision (d) shall be  
24 conditioned on the following terms, conditions, and rights, which  
25 may not be waived or modified by the prizewinner:

26 (1) The payment of moneys to, or on behalf of, the prizewinner  
27 by the assignee in consideration for the assignment of the prize  
28 payment or payments shall be made in full prior to the time when,  
29 under the terms of the assignment, the lottery is required to make  
30 the first prize payment to the assignee, or may be made in two  
31 installments, the first being paid prior to the time when, under the  
32 terms of the assignment, the lottery is required to make the first  
33 prize payment to the assignee and the second installment within 11  
34 months thereafter. The second installment shall not be in an  
35 amount that exceeds the first installment.

36 (2) If the prizewinner elects to accept the consideration to be  
37 paid for the assignment in two installments as provided in  
38 paragraph (1), the prizewinner shall have a special lien for the  
39 balance of any payment due, effective without any further action,  
40 agreement, or notice, on any of the prize payments assigned by the

prizewinner for the payment of moneys from the assignee. This lien shall terminate upon the prizewinner receiving actual payment of the moneys. The tendering of a check, payment instrument, or recital of payment shall not constitute actual payment of moneys for the purposes of this paragraph.

(3) The Legislature finds and declares that the creation of a statutory lien in favor of a prizewinner is necessary to protect the rights of the prizewinner from any creditors, subsequent bankruptcy trustees of the assignee, or from any subsequent assignees when the prizewinner has not received full payment for the assigned prize payments.

(f) Prior to the assignment of any prize as provided in subdivisions (c) and (d), the Controller shall determine whether the prizewinner owes any obligation that is subject to offset under Article 2 (commencing with Section 12410) of Chapter 5 of Part 2 of Division 3 and shall provide written notification of that determination to the lottery and to the Secretary of State.

(g) If the lottery determines that the court order issued pursuant to subdivision (d) is complete and correct in all respects, the lottery shall send the prizewinner and the assignee or assignees written confirmation of receipt of the court-ordered assignment and of the lottery's intention to rely thereon in making future payments to the assignee or assignees named in the court order.

(h) Notwithstanding any other provision of law, by entering into an agreement to assign any prize payments pursuant to subdivision (c) or (d), a prizewinner shall be deemed to have waived any statutory period of limitation as to the State of California enforcing any rights against annual prize payments due after the last assigned payment is paid or released, if assigned as collateral, from the lien granted the secured creditor. No assignment of prize payments pursuant to either subdivision (c) or (d) shall be valid or allowed for the final three annual prize payments from the lottery to the prizewinner.

(i) Any loans made to a prizewinner pursuant to this section shall be exempt from the usury provisions of Article XV of the California Constitution with respect to an assignment of a lottery prize as collateral to secure a loan.

(j) (1) Notwithstanding any other provision of this section, no prizewinner shall have the right to assign prize payments pursuant

1 to subdivision (d) or direct the payment of a prize pursuant to  
2 paragraph (4) of subdivision (c) if any of the following occurs:

3 (A) The issuance by the United States Internal Revenue  
4 Service (IRS) of a technical rule letter, revenue ruling, or other  
5 public ruling of the IRS in which the IRS determines that, based  
6 upon the right of assignment provided in subdivision (d), a  
7 California lottery prizewinner who does not assign any prize  
8 payments pursuant to subdivision (d) would be subject to an  
9 immediate income tax liability for the value of the entire prize  
10 rather than annual income tax liability for each installment when  
11 paid.

12 (B) The issuance by a court of competent jurisdiction of a  
13 published decision holding that, based upon the right of  
14 assignment provided in subdivision (d), a California lottery  
15 prizewinner who does not assign any prize payments pursuant to  
16 subdivision (d) would be subject to an immediate income tax  
17 liability for the value of the entire prize rather than annual income  
18 tax liability for each installment when paid.

19 (2) Upon receipt of a letter or ruling from the IRS or a published  
20 decision of a court of competent jurisdiction, as specified in  
21 paragraph (1), the director shall immediately file a copy of that  
22 letter, ruling, or published decision with the Secretary of State.

23 Immediately upon the filing by the director of a letter, ruling, or  
24 published decision with the Secretary of State, a prizewinner shall  
25 be ineligible to assign a prize pursuant to subdivision (d) or direct  
26 the payment of a prize pursuant to paragraph (4) of subdivision (c).

27 SEC. 141. Section 10205.1 of the Government Code is  
28 amended to read:

29 10205.1. (a) Notwithstanding Sections 18523, 18900,  
30 18901, 18930, 18930.5, 18931, 18933, 18936, 18937, 18938.5,  
31 18939, 18950, 19050, 19052, 19054, 19054.1, 19057, 19057.1,  
32 19057.2, 19057.4, 19081, and 19101, or any other provision of  
33 law, but consistent with the merit principles of subdivision (b) of  
34 Section 1 of Article VII of the California Constitution, the  
35 Legislative Counsel Bureau appointing authority may assign  
36 persons to classifications and ranges, conduct examinations, and  
37 make appointments as specified by this section. The purpose of  
38 this section is to improve the management of the Legislative Data  
39 Center, a division of the Legislative Counsel Bureau, and to  
40 provide the Legislative Counsel Bureau with greater flexibility

1 and adaptability reflective of the information technology  
2 profession.

3 (b) The Legislative Counsel Bureau appointing authority may,  
4 as a consolidation of the information technology classifications  
5 otherwise available to the bureau, utilize the band classifications  
6 of information systems supervisor/manager, information  
7 technology specialist, and information technician, as available to  
8 the bureau on January 1, 2003, under the demonstration project  
9 described in Section 1 of the act that added this section, as those  
10 classifications may subsequently be modified by the State  
11 Personnel Board, or into other information technology  
12 classifications established by the State Personnel Board. Each of  
13 these band classifications is hereby divided into the ranges that  
14 existed in that classification on January 1, 2003, under that  
15 demonstration project, which ranges may be modified as provided  
16 for by the State Personnel Board, including the delegation of  
17 authority to the Legislative Counsel Bureau appointing authority.

18 (c) Through the delegation of authority to the Legislative  
19 Counsel Bureau appointing authority or otherwise, the State  
20 Personnel Board shall provide for the allocation, as appropriate, of  
21 employees of the bureau having civil service status to the  
22 appropriate classification and range authorized pursuant to this  
23 section and shall grant to each ~~such~~ employee the same civil  
24 service status in that classification and range without further  
25 examination.

26 (d) The Legislative Counsel Bureau appointing authority may  
27 conduct competitive examinations on a position-by-position basis  
28 for the information technology classifications described in this  
29 section and make appointments for information technology  
30 positions either in the manner described in Article 6 (commencing  
31 with Section 549.70) of Subchapter 4 of Chapter 1 of Division 1  
32 of Title 2 of the California Code of Regulations in effect on  
33 January 1, 2003, or in any other manner approved by the State  
34 Personnel Board. In its exercise of authority under this subdivision  
35 pursuant to Article 6 (commencing with Section 549.70) of  
36 Subchapter 4 of Chapter 1 of Division 1 of Title 2 of the California  
37 Code of Regulations, the Legislative Counsel Bureau appointing  
38 authority shall rank each examination candidate in the manner  
39 specified in Article 4 (commencing with Section ~~458.30~~ 548.30)  
40 and Article 5 (commencing with Section 548.40) of Subchapter 2

1 of Chapter 1 of Division 1 of Title 2 of the California Code of  
2 Regulations.

3 SEC. 142. Section 12012.30 of the Government Code is  
4 amended to read:

5 12012.30. The tribal-state gaming compact entered into in  
6 accordance with the Indian Gaming Regulatory Act of 1988 (18  
7 U.S.C. ~~See~~ *Secs.* 1166 to 1168, incl., and 25 U.S.C. Sec. 2701 et  
8 seq.) between the State of California and the Torres-Martinez  
9 Desert Cahuilla Indians, executed on August 12, 2003, is hereby  
10 ratified.

11 SEC. 143. Section 12080.3 of the Government Code is  
12 amended to read:

13 12080.3. Each reorganization plan transmitted by the  
14 Governor under this article:

15 (a) May change the name of any agency affected by a  
16 reorganization and the title of its head, and shall designate the  
17 name of any agency resulting from a reorganization and the title  
18 of its head;

19 (b) May include provisions, in accordance with Article ~~XXIV~~  
20 *VII* of the *California* Constitution, for the appointment of the head  
21 and one or more other officers of any agency, including an agency  
22 resulting from a consolidation or other type of reorganization, if  
23 the Governor finds, and in his *or her* message transmitting the plan  
24 declares, that by reason of a reorganization made by the plan ~~such~~  
25 *the* provisions are in the public interest. The head ~~so provided for~~  
26 may be an individual; ~~or may be~~ a commission or board with two  
27 or more members; ~~but in.~~ *In* any case, the appointment of ~~such the~~  
28 agency head shall be subject to confirmation by the Senate. The  
29 term of office of any appointee, if any is provided, shall be fixed  
30 at not more than four years. The Legislature shall fix the  
31 compensation of all ~~such~~ department heads and ~~such~~ officers ~~as~~  
32 *who* are not subject to ~~the provisions of~~ Article ~~24~~ *VII* of the  
33 California Constitution.

34 (c) Shall ~~make provision~~ *provide* for the transfer of employees  
35 serving in the state civil service, other than temporary employees,  
36 who are engaged in the performance of a function transferred to  
37 another agency; or engaged in the administration of a law, the  
38 administration of which is transferred to ~~such the~~ agency, by the  
39 reorganization plan. The status, positions, and rights of ~~such those~~  
40 persons shall not be affected by their transfer and shall continue to



be retained by them pursuant to the State Civil Service Act (*Part 2 (commencing with Section 18500) of Division 5*), except as to positions the duties of which are vested in a position exempt from civil service.

(d) Shall ~~make provision~~ *provide* for the transfer or other disposition of the personnel records and property; affected by any ~~reorganizations; reorganization.~~

(e) Shall ~~make provision~~ *provide* for the transfer of ~~such~~ unexpended balances of appropriations and of other funds available for use in connection with any function or agency affected by a reorganization, as ~~he~~ *the Governor* deems necessary by reason of the reorganization, for use in connection with the functions affected by the reorganization; or for the use of the agency—~~which that has such these~~ functions after the reorganization plan ~~is becomes~~ effective. ~~Unexpended balances so transferred~~ *Transferred balances* shall be used only for the purpose for which the appropriation was originally made;.

(f) Shall ~~make provision~~ *provide* for terminating the affairs of any agency abolished;.

(g) Shall enumerate all acts of the Legislature ~~which that~~ will be suspended if the reorganization plan becomes effective.

SEC. 144. Section 12598 of the Government Code is amended to read:

12598. (a) The primary responsibility for supervising charitable trusts in California, for ~~insuring~~ *ensuring* compliance with trusts and articles of incorporation, and for protection of assets held by charitable trusts and public benefit corporations, resides in the Attorney General. The Attorney General has broad powers under common law and California statutory law to carry out these charitable trust enforcement responsibilities. These powers include, but are not limited to, charitable trust enforcement actions under all of the following:

(1) This article.

(2) Title 8 (commencing with Section 2223) of Part 4 of Division 3 of the Civil Code.

(3) Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code.

(4) Sections 8111, 11703, 15004, 15409, 15680 to 15685, *inclusive*, 16060 to 16062, *inclusive*, 16064, and 17200 to 17210, *inclusive*, of the Probate Code.



(5) Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, and Sections 17500 and 17535 of the Business and Professions Code.

(6) Sections 319, 326.5, and 532d of the Penal Code.

(b) The Attorney General shall be entitled to recover from defendants named in a charitable trust enforcement action all reasonable attorney's fees and actual costs incurred in conducting that action, including, but not limited to, the costs of auditors, consultants, and experts employed or retained to assist with the investigation, preparation, and presentation in court of the charitable trust enforcement action.

(c) Attorney's fees and costs shall be recovered by the Attorney General pursuant to court order. When awarding attorneys' fees and costs, the court shall order that the ~~attorneys'~~ attorney's fees and costs be paid by the charitable organization and the individuals named as defendants in or otherwise subject to the action, in a manner that the court finds to be equitable and fair.

(d) Upon a finding by the court that a lawsuit filed by the Attorney General was frivolous or brought in bad faith, the court may award the defendant charity the costs of that action.

(e) (1) The Attorney General may refuse to register or may revoke or suspend the registration of a charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer whenever the Attorney General finds that the charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer has violated or is operating in violation of any provisions of this article.

(2) All actions of the Attorney General shall be taken subject to the rights authorized pursuant to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2.

SEC. 145. Section 13995.20 of the Government Code is amended to read:

13995.20. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) "~~Appointed Commissioner~~" *commissioner*" means a commissioner appointed by the Governor.

(b) "Assessed business" means a person required to pay an assessment pursuant to this chapter, and until the first assessment is levied, any person authorized to vote for the initial referendum.

An assessed business shall not include a public entity or a

1 corporation when a majority of the corporation's board of directors  
2 is appointed by a public official or public entity, or serves on the  
3 corporation's board of directors by virtue of being elected to public  
4 office, or both.

5 (c) "Commission" means the California Travel and Tourism  
6 Commission.

7 (d) "Elected ~~Commissioner~~ commissioner" means a  
8 commissioner elected pursuant to subdivision (d) of Section  
9 ~~13395.40~~ 13995.40.

10 (e) "Industry category" means the following classifications  
11 within the tourism industry:

12 (1) Accommodations.

13 (2) Restaurants and retail.

14 (3) Attractions and recreation.

15 (4) Transportation and travel services.

16 (f) "Industry segment" means a portion of an industry  
17 category. For example, rental cars are an industry segment of the  
18 transportation and travel services industry category.

19 (g) "Office" means the Office of Tourism, also popularly  
20 referred to as the Division of Tourism, within the Business,  
21 Transportation and Housing Agency.

22 (h) "Person" means an individual, public entity, firm,  
23 corporation, association, or any other business unit, whether  
24 operating on a ~~for-a-profit~~ *for-profit* or nonprofit basis.

25 (i) "Referendum" means any vote by mailed ballot of  
26 measures recommended by the commission and approved by the  
27 secretary pursuant to Section ~~13395.60~~ 13995.60, except for the  
28 initial referendum, which shall consist of measures contained in  
29 the selection committee report, discussed in Section ~~13395.21~~  
30 13995.30.

31 (j) "Secretary" means the Secretary of Business,  
32 Transportation and Housing.

33 (k) "Selection Committee" means the Tourism Selection  
34 Committee described in Article 3 (commencing with Section  
35 13995.30).

36 SEC. 146. Section 13995.40 of the Government Code is  
37 amended to read:

38 13995.40. (a) Upon approval of the initial referendum, the  
39 office shall establish a nonprofit mutual benefit corporation named  
40 the California Travel and Tourism Commission. The commission

1 shall be under the direction of a board of commissioners, which  
2 shall function as the board of directors for purposes of the  
3 Nonprofit Corporation Law.

4 (b) The board of commissioners shall consist of 37  
5 commissioners comprising the following:

6 (1) The secretary, who shall serve as chairperson.

7 (2) Twelve members, who are professionally active in the  
8 tourism industry, representing each of the 12 officially designated  
9 tourism regions and diverse elements of the industry, shall be  
10 appointed by the Governor. Appointed commissioners are not  
11 limited to assessed businesses.

12 (3) Twenty-four elected commissioners, including at least one  
13 representative of a travel agency or tour operator that is an assessed  
14 business.

15 (c) The commission established pursuant to Section 15364.52  
16 shall be inoperative so long as the commission established  
17 pursuant to this section is in existence.

18 (d) Elected commissioners shall be elected by industry  
19 category in a referendum. Regardless of the number of ballots  
20 received for a referendum, the nominee for each commissioner slot  
21 with the most weighted votes from assessed businesses within that  
22 industry category shall be elected commissioner. In the event that  
23 an elected commissioner resigns, dies, or is removed from office  
24 during his or her term, the commission shall appoint a replacement  
25 from the same industry category that the commissioner in question  
26 represented, and that commissioner shall fill the remaining term  
27 of the commissioner in question. The number of commissioners  
28 elected from each industry category shall be determined by the  
29 weighted percentage of assessments from that category.

30 (e) The secretary may remove any elected commissioner  
31 following a hearing at which the commissioner is found guilty of  
32 abuse of office or moral turpitude.

33 (f) With the exception of the secretary, no commissioner shall  
34 serve for more than two consecutive terms.

35 (g) Except for the original commissioners, all commissioners  
36 shall serve four-year terms. One-half of the commissioners  
37 originally appointed or elected shall serve a two-year term, while  
38 the remainder shall serve a four-year term. Every two years  
39 thereafter, one-half of the commissioners shall be appointed or  
40 elected by referendum.

1 (h) The selection committee shall determine the initial slate of  
2 candidates for elected commissioners. Thereafter the  
3 commissioners, by adopted resolution, shall nominate a slate of  
4 candidates, and shall include any additional candidates complying  
5 with the procedure described in Section ~~13395.62~~ 13995.62.

6 (i) The commissioners shall elect a vice chairperson from the  
7 elected commissioners.

8 (j) The commission may lease space from the office.

9 (k) The commission and the office shall be the official state  
10 representatives of California tourism.

11 (l) All commission meetings shall be held in California.

12 (m) No person shall receive compensation for serving as a  
13 commissioner, but each commissioner shall receive  
14 reimbursement for reasonable expenses incurred while on  
15 authorized commission business.

16 (n) Assessed businesses shall vote only for commissioners  
17 representing their industry category.

18 (o) Commissioners shall comply with the requirements of the  
19 Political Reform Act of 1974 (*Title 9 (commencing with Section*  
20 *81000)*). The Legislature finds and declares that commissioners  
21 appointed or elected on the basis of membership in a particular  
22 tourism segment are appointed or elected to represent and serve the  
23 economic interests of those tourism segments and that the  
24 economic interests of these members are the same as those of the  
25 public generally.

26 (p) Commission meetings shall be subject to the requirements  
27 of the Bagley-Keene Open Meeting Act (Article 9 (commencing  
28 with Section 11120) of Chapter 1 of Part 1).

29 (q) The executive director of the commission shall serve as  
30 secretary to the commission, a nonvoting position, and shall keep  
31 the minutes and records of all commission meetings.

32 SEC. 147. Section 13995.42 of the Government Code is  
33 amended to read:

34 13995.42. (a) The commission is a separate, independent  
35 California nonprofit mutual benefit corporation. Except as  
36 provided in Section ~~13395.43~~ 13995.43, the staff of the  
37 commission shall be employees solely of the commission, and the  
38 procedures adopted by the commission shall not be subject to the  
39 Administrative Procedure Act (Chapter 3.5 (commencing with  
40 Section 11340) of Part 1).

(b) Not later than six months following the initial referendum, the commission shall adopt procedures concerning the operation of the commission in order to provide due process rights for assessed businesses.

(c) In the event that the commission fails to adopt the procedures described in subdivision (b) within the specified timeframe, the secretary shall adopt procedures for use by the commission until the commission adopts its own procedures. These procedures shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1), whether adopted by the commission or secretary.

SEC. 148. Section 13995.58 of the Government Code is amended to read:

13995.58. The office may contract with the commission in order for the commission to undertake marketing activities utilizing state funds, ~~and~~. Section 10295 of the *Public Contract Code*, and Article 4 (commencing with Section 10335) and Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code, shall not apply to those agreements.

SEC. 149. Section 13995.65 of the Government Code is amended to read:

13995.65. (a) Each industry category shall establish a committee to determine the following within its industry category: industry segments, assessment formula for each industry segment, and any types of business exempt from assessment. The initial segment committees shall consist of the subcommittee for that category as described in subdivision ~~(e)~~ (d) of Section 13995.30. Following approval of the assessment by referendum, the committees shall be selected by the commission, based upon recommendations from the tourism industry. Committee members need not be commission members.

(b) The committee recommendations shall be presented to the commission or selection committee, as applicable. The selection committee may adopt a resolution specifying some or all of the items listed in subdivision (a), plus an allocation of the overall assessment among industry categories. The commission may adopt a resolution specifying one or more of the items listed in subdivision (a), plus an allocation of the proposed assessment. The

1 selection committee and commission are not required to adopt the  
2 findings of any committee.

3 (c) The initial industry category and industry segment  
4 allocations shall be included in the selection committee report  
5 required by subdivision (b) of Section 13995.30. Changes to the  
6 industry segment allocation formula may be recommended to the  
7 commission by a segment committee at the biennial commission  
8 meeting scheduled to approve the referendum resolution pursuant  
9 to Section 13995.60. At the same meeting, the commission may  
10 amend the percentage allocations among industry categories. Any  
11 item discussed in this section that is approved by resolution of the  
12 commission, except amendments to the percentage allocations  
13 among industry categories, shall be placed on the next referendum,  
14 and adopted if approved by the majority of weighted votes cast.

15 (d) Upon approval by referendum, the office shall mail an  
16 assessment bill to each assessed business. The secretary shall  
17 determine how often assessments are collected, based upon  
18 available staffing resources. The secretary may stagger the  
19 assessment collection throughout the year, and charge businesses  
20 a prorated amount of assessment because of the staggered  
21 assessment period. The secretary and office shall not divulge the  
22 amount of assessment or weighted votes of any assessed  
23 businesses, except as part of an assessment action.

24 (e) An assessed business may appeal an assessment to the  
25 secretary based upon the fact that the business does not meet the  
26 definition established for an assessed business within its industry  
27 segment or that the level of assessment is incorrect. An appeal  
28 brought under this subdivision shall be supported by substantial  
29 evidence submitted under penalty of perjury by affidavit or  
30 declaration as provided in Section 2015.5 of the Code of Civil  
31 Procedure. If the error is based upon failure of the business to  
32 provide the required information in a timely manner, the secretary  
33 may impose a fee for reasonable costs incurred by the secretary in  
34 correcting the assessment against the business as a condition of  
35 correcting the assessment.

36 (f) Notwithstanding any other provision of law, an assessed  
37 business may pass on some or all of the assessment to customers.  
38 An assessed business that is passing on the assessment may, but  
39 shall not be required to, separately identify or itemize the  
40 assessment on any document provided to a customer. Assessments

1 levied pursuant to this chapter and passed on to customers are not  
2 part of gross receipts or gross revenue for any purpose, including  
3 the calculation of sales or use tax and income pursuant to any lease.  
4 However, assessments that are passed on to customers shall be  
5 included in gross receipts for purposes of income and franchise  
6 taxes.

7 (g) For purposes of calculating the assessment for a business  
8 with revenue in more than one industry category or industry  
9 segment, that business may elect to be assessed based on either of  
10 the following:

11 (1) The assessment methodology and rate of assessment  
12 applicable to each category or segment, respectively, as it relates  
13 to the revenue that it derives from that category or segment.

14 (2) With respect to its total revenue from all industry categories  
15 or segments, the assessment methodology and rate of assessment  
16 applicable to the revenue in the category and segment in which it  
17 earns the most gross revenue.

18 SEC. 150. Section 13995.74 of the Government Code is  
19 amended to read:

20 13995.74. In lieu of requiring advance deposits pursuant to  
21 Section ~~13395.73~~ 13995.73, or in order generally to provide funds  
22 for defraying administrative expenses or the expenses of  
23 implementing the tourism marketing plan until the time that  
24 sufficient moneys are collected for this purpose from the payment  
25 of the assessments that are established pursuant to this chapter, the  
26 secretary may receive and disburse for the express purposes  
27 contributions that are made by assessed businesses. If, however,  
28 collections from the payment of established assessments are  
29 sufficient to so warrant, the secretary shall authorize the  
30 repayment of contributions, or authorize the application of the  
31 contributions to the assessment obligations of persons that made  
32 the contributions.

33 SEC. 151. Section 13997.1 of the Government Code is  
34 amended to read:

35 13997.1. (a) The Governor shall instruct the Secretary of  
36 Business, Transportation and Housing to establish, on a contract  
37 basis, an international trade and investment office in Yerevan, in  
38 the Republic of Armenia, to serve the region of Eastern Europe and  
39 Western Asia.



1 (b) The secretary shall report to the Legislature on the success  
2 of the international trade and investment office in Yerevan no later  
3 than March 1, 2005. The report shall include, but not be limited to,  
4 all of the following:

5 (1) The level of investment and tourism directed to California  
6 as a direct result of the international trade and investment office.

7 (2) The level of imports sent to California as a direct result of  
8 the international trade and investment office.

9 (3) The level of California exports sent to the region of Eastern  
10 Europe and Western Asia as a direct result of the international trade  
11 and investment office.

12 (4) A cost-benefit analysis of the international trade and  
13 investment office.

14 (5) An analysis of the costs and outcomes of the international  
15 trade and investment office compared with those of the other  
16 international trade and investment offices.

17 (c) This section shall be implemented only to the extent that  
18 funds are available to the Business, Transportation and Housing  
19 Agency for this purpose from any source, including, but not  
20 limited to, federal funding and private donations authorized  
21 pursuant to Section ~~13397~~ 13997. Private donations made  
22 pursuant to Section ~~13397~~ 13997 and specified for the  
23 international trade and investment office in Yerevan shall be  
24 deposited in a separate subaccount within the Economic  
25 Development and Trade Promotion Account and may be used only  
26 for the operation of this office.

27 (d) This section shall remain in effect only until January 1,  
28 2006, and as of that date is repealed, unless a later enacted statute,  
29 that is enacted before January 1, 2006, deletes or extends that date.

30 SEC. 152. Section 14055.2 of the Government Code is  
31 amended to read:

32 14055.2. Funds made available to the department shall be  
33 allocated as follows:

34 (a) Not more than 5 percent of the annual federal  
35 apportionment may be retained by the department for the cost of  
36 administering grants.

37 (b) The remaining funds shall be allocated by the department,  
38 as directed by the commission, consistent with ~~the provisions~~  
39 Section 14055.

1 SEC. 153. Section 18215 of the Government Code is  
2 amended to read:

3 18215. (a) Except as provided in subdivision (b), regulations  
4 concerning the following shall be subject to the ~~Administration~~  
5 *Administrative* Procedure Act (Chapter 3.5 (commencing with  
6 Section 11340) of Part 1 of Division 3):

7 (1) Representation of minorities, women, and persons with  
8 disabilities in the state work force.

9 (2) Equal employment opportunities.

10 (3) Board hearing procedures relating to public testimony and  
11 participation, except a procedure that is expressly required by  
12 statute.

13 (4) Disciplinary hearing procedures not mandated by statutes,  
14 court decisions, or board precedential decisions. However, rulings  
15 within the discretion of an administrative law judge are not subject  
16 to this article.

17 (5) Drug testing.

18 (6) Grounds for employee discipline.

19 (7) Reasonable accommodation.

20 (b) Notwithstanding subdivision (a), the following provisions  
21 of the Administrative Procedure Act shall not apply to regulations  
22 concerning the subjects specified in subdivision (a):

23 (1) Section 11346.14.

24 (2) Paragraph (1) of subdivision (a) of, and paragraphs (4), (5),  
25 and (6) of subdivision (b) of, Section 11346.2.

26 (3) Section 11346.3.

27 (4) Paragraph (3) of subdivision (a) of Section 11346.4.

28 (5) Subparagraph (B) of paragraph (3) of, and paragraphs (5)  
29 and (7) to (12), inclusive, of, subdivision (a) of Section 11346.5.

30 (6) Paragraphs (2), (4), and (5) of subdivision (a) of Section  
31 11346.9.

32 (7) Paragraphs (3) and (4) of subdivision (a) of Section  
33 11347.3.

34 (8) Subdivisions (a), (e), and (f) of Section 11349.

35 (9) Paragraphs (1), (5), and (6) of subdivision (a) of, and  
36 paragraph (3) of subdivision (d) of, Section 11349.1.

37 SEC. 154. Section 19063.1 of the Government Code is  
38 amended to read:

39 19063.1. Each state agency that intends to establish qualified  
40 hiring pools, as defined by the State Personnel Board, for seasonal

or entry level nontesting class employment shall notify the Employment Development Department or its delegate in the area where the openings are expected to occur at least 45 ~~calendar~~ *calendar* days prior to the establishment of the pool. The state agency shall request referrals of public assistance recipients and at the same time shall provide necessary job-related information.

SEC. 155. Section 19582.1 of the Government Code is amended to read:

19582.1. Notwithstanding Section 19582, this section shall apply to state employees in State Bargaining Unit 8.

(a) The board's review of decisions of minor discipline, as defined by a memorandum of understanding or by Section 19576.5, shall be limited to either adopting the penalty of the proposed decision or revoking the disciplinary action in its entirety.

(b) The board's review of decisions of discipline, including minor discipline, shall not impose any discipline against an employee that would jeopardize the employee's status under the federal Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of The Fair Labor Standards Act of 1938, as amended (~~Title 29, Section 213(a)(1), United States Code~~) (29 U.S.C. Sec. 213(a)(1)) and in Part 54 of Title 29 of the Code of Federal Regulations, as defined and delimited on the effective date of this section and as those provisions ~~may be~~ *may be* amended in the future.

(c) If provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if ~~such~~ *the* provisions of a memorandum of understanding require the expenditure of funds, the provision shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 156. Section 19826 of the Government Code is amended to read:

19826. (a) The department shall establish and adjust salary ranges for each class of position in the state civil service subject to any merit limits contained in Article VII of the California Constitution. The salary range shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities. In establishing or changing these ranges,

1 consideration shall be given to the prevailing rates for comparable  
2 service in other public employment and in private business. The  
3 department shall make no adjustments that require expenditures in  
4 excess of existing appropriations that may be used for salary  
5 increase purposes. The department may make a change in salary  
6 range retroactive to the date of application ~~for these~~ *of this* change.

7 (b) Notwithstanding any other provision of law, the department  
8 shall not establish, adjust, or recommend a salary range for any  
9 employees in an appropriate unit where an employee organization  
10 has been chosen as the exclusive representative pursuant to Section  
11 3520.5.

12 (c) At least six months before the end of the term of an existing  
13 memorandum of understanding or immediately upon the  
14 reopening of negotiations under an existing memorandum of  
15 understanding, the department shall submit to the parties meeting  
16 and conferring pursuant to Section 3517 and to the Legislature, a  
17 report containing the department's findings relating to the salaries  
18 of employees in comparable occupations in private industry and  
19 other governmental agencies.

20 (d) If the provisions of this section are in conflict with the  
21 provisions of a memorandum of understanding reached pursuant  
22 to Section 3517.5, the memorandum of understanding shall be  
23 controlling without further legislative action, except that if the  
24 provisions of a memorandum of understanding require the  
25 expenditure of funds, the provisions shall not become effective  
26 unless approved by the Legislature in the annual Budget Act.

27 SEC. 157. Section 20035.2 of the Government Code is  
28 amended to read:

29 20035.2. Notwithstanding Sections 20035 and 20037, "final  
30 ~~compensation~~" *compensation*," for the purpose of determining  
31 any pension or benefit with respect to a patrol member who retires  
32 or dies on or after July 1, 2003, who was a member of State  
33 Bargaining Unit 5, and whose monthly salary range that was to be  
34 effective July 1, 2003, was reduced by 5 percent pursuant to an  
35 addendum to a memorandum of understanding entered during the  
36 2003–04 fiscal year, "~~final compensation~~" means the highest  
37 annual compensation the patrol member would have earned as of  
38 July 1, 2003, if that ~~5-percent~~ *5-percent* reduction had not  
39 occurred. This ~~subdivision~~ *section* shall ~~only~~ *only* apply if the  
40 period during which the patrol member's salary was reduced

would have otherwise been included in determining his or her final compensation. The increased costs, if any, that may result from the application of the definition of “final compensation” provided in this section shall be paid by the employer in the same manner as other retirement benefits are funded.

SEC. 158. Section 20035.3 of the Government Code is amended to read:

20035.3. Notwithstanding Sections 20035 and 20037, “~~final compensation~~” *compensation*,” for the purpose of determining any pension or benefit with respect to a state miscellaneous or peace officer/firefighter member who retires or dies on or after July 1, 2003, who was a member of State Bargaining Unit 8, and whose monthly salary range that was to be effective July 1, 2003, was reduced by 5 percent pursuant to an addendum to a memorandum of understanding entered during the 2003–04 fiscal year, “~~final compensation~~” means the highest annual compensation the member would have earned as of July 1, 2003, if that ~~5-percent~~ *5-percent* reduction had not occurred. This ~~subdivision~~ *section* shall ~~only~~ *only* apply if the period during which the member’s salary was reduced would have otherwise been included in determining his or her final compensation. The increased costs, if any, that may result from the application of the definition of “final compensation” provided in this section shall be paid by the employer in the same manner as other retirement benefits are funded.

SEC. 159. Section 20035.4 of the Government Code is amended to read:

20035.4. Notwithstanding Sections 20035 and 20037, “final compensation,” for the purpose of determining any pension or benefit with respect to a member who retires or dies on or after July 1, 2003, who was a member of State Bargaining Unit 16, and whose monthly salary range that was to be effective July 1, 2003, was reduced by 5 percent pursuant to a memorandum of understanding entered during the 2003–04 fiscal year, means the highest annual compensation the member would have earned as of July 1, 2003, if that ~~5-percent~~ *5-percent* reduction had not occurred. This section shall ~~only~~ *only* apply if the period during which the member’s salary was reduced would have otherwise been included in determining his or her final compensation. The increased costs, if any, that may result from the application of the definition of

1 “final compensation” provided in this section shall be paid by the  
2 employer in the same manner as other retirement benefits are  
3 funded.

4 SEC. 160. Section 20035.5 of the Government Code, as  
5 added by Chapter 615 of the Statutes of 2003, is amended and  
6 renumbered to read:

7 ~~20035.5.~~

8 20035.6. Notwithstanding Sections 20035 and 20037, “final  
9 compensation,” for the purpose of determining any pension or  
10 benefit with respect to a member who retires or dies on or after July  
11 1, 2003, who was a member of State Bargaining Unit 19, and  
12 whose monthly salary range that was to be effective July 1, 2003,  
13 was reduced by 5 percent pursuant to a memorandum of  
14 understanding entered during the 2003–04 fiscal year, means the  
15 highest annual compensation the member would have earned as of  
16 July 1, 2003, if that ~~5-percent~~ 5-percent reduction had not occurred.  
17 This section shall ~~only~~ apply *only* if the period during which the  
18 member’s salary was reduced would have otherwise been included  
19 in determining his or her final compensation. The increased costs,  
20 if any, that may result from the application of the definition of  
21 “final compensation” provided in this section shall be paid by the  
22 employer in the same manner as other retirement benefits are  
23 funded.

24 SEC. 161. Section 20035.10 of the Government Code is  
25 amended to read:

26 20035.10. (a) Notwithstanding Sections 20035 and 20037,  
27 ~~“final compensation”~~ *compensation*, for the purpose of  
28 determining any pension or benefit with respect to a state  
29 miscellaneous member (1) who retires or dies on or after July 1,  
30 2003, (2) who was a member of the state bargaining unit listed in  
31 subdivision (b), and (3) whose monthly salary range that was to be  
32 effective July 1, 2003, was reduced by 5 percent pursuant to a  
33 memorandum of understanding entered into during the 2003–04  
34 fiscal year, means the highest annual compensation the member  
35 would have earned as of July 1, 2003, if that ~~5-percent~~ 5-percent  
36 reduction had not occurred. This section shall apply *only* if the  
37 period during which the member’s salary was reduced would have  
38 otherwise been included in determining his or her final  
39 compensation. The increased costs, if any, that may result from the  
40 application of the definition of “final compensation” provided in

1 this section shall be paid by the employer in the same manner as  
2 other retirement benefits are funded.

3 (b) ~~The~~ *This* section shall apply with respect to members in  
4 State Bargaining Unit 9.

5 SEC. 162. Section 20235 of the Government Code is  
6 amended to read:

7 20235. (a) The board shall submit a review of this system's  
8 assets to the Legislature on a quarterly basis. The report shall also  
9 be made available to all contracting agencies. The report shall *do*  
10 *both of the following*:

11 (1) Discuss this system's portfolio and contain the following  
12 information:

13 (A) Concentration, current holdings at cost and market value,  
14 of equities.

15 (B) Concentration, current holdings at cost and market value,  
16 of fixed income instruments.

17 (C) Current holdings at cost and market value of real estate  
18 equities.

19 (D) Current holdings at cost and market value of mortgages.

20 (E) Options and forward commitments.

21 (F) Cash and cash equivalents.

22 (2) Disclose the following information on the rate of return of  
23 the fund by type of asset:

24 (A) Time-weighted return on a five-year, three-year, two-year,  
25 and one-year basis.

26 (B) Dollar-weighted return on a five-year, three-year,  
27 two-year, and one-year basis.

28 (C) Summary of performance of an alternative theoretical  
29 portfolio containing all investments and performance of  
30 comparable universes and other indexes.

31 (b) Upon written request from a contracting agency that does  
32 not participate in a risk pool, the board shall submit additional  
33 quarterly reports to the contracting agency as described in this  
34 subdivision. For the first quarter of the fiscal year, the report shall  
35 be submitted within 120 days after the end of the quarter and shall  
36 contain the agency's beginning balance for the fiscal year. For the  
37 second and third quarters of the fiscal year, the report shall be  
38 submitted to the contracting agency within 90 days after the end  
39 of the quarter. For the fourth quarter of the fiscal year, the report  
40 shall be submitted within 180 days after the end of the quarter and



1 shall contain the agency's balance as of the end of the fiscal year.  
2 The report shall include, but need not be limited to, the following:

3 (1) All contributions made to the system by the contracting  
4 agency and its employees. The contributions shall be reported as  
5 the amounts paid and the amounts due from the contracting agency  
6 for both employer contributions and employee contributions.

7 (2) All benefits paid by the system to members of the  
8 contracting agency and their survivors and beneficiaries,  
9 including payments on account of pension, death, and disability  
10 benefits, and withdrawals of contributions. The benefits shall be  
11 reported as the total monthly allowances paid to retirees,  
12 survivors, and beneficiaries; the amount of total refunds paid; and  
13 the amount of any other lump sums paid.

14 (3) An amount that represents any miscellaneous adjustments,  
15 including transfers in and out.

16 (4) That quarter's portion of the agency's estimated share of the  
17 system's administrative costs that shall be assessed at the end of the  
18 fiscal year.

19 (5) The rate of return for the system during the quarter as  
20 reported to the board by the investment committee.

21 (6) The estimated interest applied to the agency's account as  
22 determined by the system. For purposes of this paragraph, the  
23 "estimated interest applied" means the estimate of the annual net  
24 earnings, as defined in Section 20052, and is subject to adjustment  
25 at the end of the fiscal year based on the actual dollar-weighted  
26 amount of investment return that shall be credited to the agency's  
27 account for the fiscal year. The report for the fourth quarter of the  
28 fiscal year shall also include the actual dollar-weighted amount of  
29 investment return for the fiscal year that shall be credited to the  
30 contracting agency's account.

31 (c) Upon written request from a contracting agency that ~~does~~  
32 ~~participate~~ *participates* in a risk pool, the board shall submit to the  
33 contracting agency quarterly reports that reflect the total  
34 contributions made to the system by agencies in the risk pool, the  
35 total benefits paid by the system with respect to the risk pool, the  
36 total estimated share of administrative costs for the risk pool, and  
37 the total estimated share of investment returns for the risk pool.

38 (d) A contracting agency requesting quarterly reports pursuant  
39 to subdivision (b) or (c) shall pay a fee, in an amount determined  
40 by the board, not to exceed one thousand five hundred dollars

1 (\$1,500) quarterly per agency while the manual process of  
2 collecting the information is in use.

3 (e) Any report received by a contracting agency pursuant to this  
4 section shall be made available by the agency to any employee  
5 organization that represents the agency's employees and that  
6 requests a copy of the report.

7 SEC. 163. Section 22013.97 of the Government Code is  
8 amended to read:

9 22013.97. "Policeman" or "fireman," as used in this part,  
10 also includes persons employed in positions set forth in ~~Sections~~  
11 *Section* 20398 for the purposes of Section 218(d)(5)(A) of the  
12 Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

13 SEC. 164. Section 22825.12 of the Government Code is  
14 amended to read:

15 22825.12. (a) Notwithstanding Section 22825.1, subdivision  
16 (b) of Section 22825.15, or any other provision of this article, the  
17 employer's contribution with respect to employees in State  
18 Bargaining Unit 16 and State Bargaining Unit 19 shall be as  
19 described in paragraphs (1) and (2). To be eligible for this  
20 contribution, the employee must be enrolled in an approved health  
21 benefits plan.

22 (1) From January 1, 2004, to December 31, 2005, inclusive, the  
23 employer's contribution for each employee shall be an amount  
24 equal to 80 percent of the weighted average of the basic health  
25 benefits plan premium for an active state civil service employee  
26 enrolled for ~~self alone~~ *himself or herself alone*, during the benefit  
27 year to which the formula is applied, for the four basic health  
28 benefits plans that had the largest active state civil service  
29 enrollment, excluding family members, during the previous  
30 benefit year. For each employee with enrolled family members,  
31 the employer shall contribute an additional 80 percent of the  
32 weighted average of the additional premiums required for  
33 enrollment of those family members, during the benefit year to  
34 which the formula is applied, in the four basic health benefits plans  
35 that had the largest active state civil service enrollment, excluding  
36 family members, during the previous benefit year.

37 (2) From and after January 1, 2006, the employer's  
38 contribution for each employee shall be an amount equal to 85  
39 percent of the weighted average of the basic health benefits plan  
40 premium for an active state civil service employee enrolled for

1 ~~self-alone~~ *himself or herself alone*, during the benefit year to which  
2 the formula is applied, for the four basic health benefits plans that  
3 had the largest active state civil service enrollment, excluding  
4 family members, during the previous benefit year. For each  
5 employee with enrolled family members, the employer shall  
6 contribute an additional 80 percent of the weighted average of the  
7 additional premiums required for enrollment of those family  
8 members, during the benefit year to which the formula is applied,  
9 in the four basic health benefits plans that had the largest active  
10 state civil service enrollment, excluding family members, during  
11 the previous benefit year.

12 (b) The employer is not obligated to make a contribution under  
13 this section for any employee unless and until the effective date of  
14 the employee's enrollment in an approved health benefits plan.

15 (c) The contribution of each employee and annuitant under this  
16 section shall be the total cost per month of the benefit coverage  
17 afforded him or her under the plan or plans less the portion thereof  
18 to be contributed by the employer.

19 (d) If the provisions of this section are in conflict with the  
20 provisions of a memorandum of understanding reached pursuant  
21 to Section 3517.5 or Chapter 12 (commencing with Section 3560)  
22 of Division 4 of Title 1, the memorandum of understanding shall  
23 be controlling without further legislative action, except that if  
24 those provisions of a memorandum of understanding require the  
25 expenditure of funds, the provisions may not become effective  
26 unless approved by the Legislature in the annual Budget Act.

27 SEC. 165. Section 25358 of the Government Code is  
28 amended to read:

29 25358. The board shall provide all necessary officers,  
30 employees, attendants, services, and supplies for the proper  
31 maintenance, care, and upkeep of the county buildings and  
32 grounds; and, the board may contract therefor pursuant to ~~Section~~  
33 ~~25450 and following~~ *Article 3.5 (commencing with Section 20120)*  
34 *of Part 3 of the Public Contract Code*.

35 SEC. 166. Section 29550 of the Government Code is  
36 amended to read:

37 29550. (a) (1) Notwithstanding any other provision of law,  
38 a county may impose a fee upon a city, special district, school  
39 district, community college district, college, or university for  
40 reimbursement of county expenses incurred with respect to the

1 booking or other processing of persons arrested by an employee of  
 2 that city, special district, school district, community college  
 3 district, college, or university, ~~where~~ if the arrested persons are  
 4 brought to the county jail for booking or detention. The fee  
 5 imposed by a county pursuant to this section shall not exceed the  
 6 actual administrative costs, including applicable overhead costs as  
 7 permitted by federal Circular A-87 standards, as defined in  
 8 subdivision (d), incurred in booking or otherwise processing  
 9 arrested persons. A county may submit an invoice to a city, special  
 10 district, school district, community college district, college, or  
 11 university for these expenses incurred by the county on and after  
 12 July 1, 1990. Counties shall fully disclose the costs allocated as  
 13 federal Circular A-87 overhead.

14 (2) Any increase in a fee charged pursuant to this section shall  
 15 be adopted by a county prior to the beginning of its fiscal year and  
 16 may be adopted only after the county has provided each city,  
 17 special district, school district, community college district,  
 18 college, or university 45 ~~days~~ days' written notice of a public  
 19 meeting held pursuant to Section 54952.2 on the fee increase and  
 20 the county has conducted the public meeting.

21 (3) Any county that imposes a fee pursuant to this section shall  
 22 negotiate a reduced fee with any city, special district, school  
 23 district, community college district, college, or university within  
 24 the county for any services that are performed by the arresting  
 25 agency in the processing of arrestees that do not have to be  
 26 duplicated by the county.

27 (4) This subdivision shall not apply to counties that are under  
 28 a contractual agreement with a city, special district, school district,  
 29 community college district, college, or university within the  
 30 county that is subject to the fee.

31 (b) The exemption of a local agency from the payment of a fee  
 32 pursuant to this subdivision does not exempt the person arrested  
 33 from the payment of fees for booking or other processing.

34 (1) Notwithstanding subdivision (a), a city, special district,  
 35 school district, community college district, college, or university  
 36 shall not be charged fees for arrests on any bench warrant for  
 37 failure to appear in court, nor on any arrest warrant issued in  
 38 connection with a crime not committed within the entity's  
 39 jurisdiction.

(2) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for a person who is ordered by a court to be remanded to the county jail except that a county may charge a fee to recover those direct costs for those functions required to book a person pursuant to subdivision (g) of Section 853.6 of the Penal Code.

(3) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for arrests made pursuant to arrest warrants originating outside of its jurisdiction.

(4) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university on parole violation arrests or probation-ordered returns to custody, unless a new charge has been filed for a crime committed in the jurisdiction of the arresting city, district, college, or university.

(5) An agency making a mutual aid request shall pay fees that result from arrests made in response to the mutual aid request except that in the event the Governor declares a state of emergency, no agency shall be charged fees for any arrest made during any riot, disturbance, or event that is subject to the declaration.

(6) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university for the arrest of a prisoner who has escaped from a county, state, or federal detention or corrections facility.

(7) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university for arrestees held in temporary detention at a court facility for purposes of arraignment when the arrestee has been previously booked at an entity detention facility.

(8) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university as the result of an arrest made by its officer assigned to a formal multiagency task force in which the county is a participant. For the purposes of this section, “formal task force” means a task force that has been established by written agreement of the participating agencies.

1 (9) In those counties ~~where~~ *in which* the cities and the county  
2 participate in a consolidated booking program and ~~where~~, prior to  
3 arraignment, an arrestee is transferred from a city detention  
4 facility to a county detention facility, the city shall not be charged  
5 for those tasks listed in subdivision (d) that are a part of the  
6 consolidated booking program ~~which~~ *that* were completed by the  
7 city prior to delivering the arrestee to the county detention facility.  
8 However, the county may charge the actual administrative costs  
9 for those additional tasks listed in subdivision (d) that are  
10 performed in order to receive the arrestee into the county detention  
11 facility.

12 (c) Any county whose officer or agent arrests a person is  
13 entitled to recover from the arrested person a criminal justice  
14 administration fee for administrative costs it incurs in conjunction  
15 with the arrest if the person is convicted of any criminal offense  
16 related to the arrest, whether or not it is the offense for which the  
17 person was originally booked. The fee which the county is entitled  
18 to recover pursuant to this subdivision shall not exceed the actual  
19 administrative costs, including applicable overhead costs incurred  
20 in booking or otherwise processing arrested persons.

21 (d) When the court has been notified in a manner specified by  
22 the court that a criminal justice administration fee is due the  
23 agency:

24 (1) A judgment of conviction may impose an order for payment  
25 of the amount of the criminal justice administration fee by the  
26 convicted person, and execution may be issued on the order in the  
27 same manner as a judgment in a civil action, but shall not be  
28 enforceable by contempt.

29 (2) The court shall, as a condition of probation, order the  
30 convicted person, based on his or her ability to pay, to reimburse  
31 the county for the criminal justice administration fee, including  
32 applicable overhead costs.

33 (e) As used in this section, “actual administrative costs”  
34 ~~include~~ *includes* only those costs for functions that are performed  
35 in order to receive an arrestee into a county detention facility.  
36 Operating expenses of the county jail facility, including ~~capital~~  
37 *capital* costs and those costs involved in the housing, feeding, and  
38 care of inmates, shall not be included in calculating “actual  
39 administrative costs.” “Actual administrative costs” may include  
40 the cost of notifying any local agency, special district, school

1 district, community college district, college, or university of any  
2 change in the fee charged by a county pursuant to this section.  
3 “Actual administrative costs” may include any one or more of the  
4 following as related to receiving an arrestee into the county  
5 detention facility:

6 (1) The searching, wristbanding, bathing, clothing,  
7 fingerprinting, photographing, and medical and mental screening  
8 of an arrestee.

9 (2) Document preparation, retrieval, updating, filing, and court  
10 scheduling related to receiving an arrestee into the detention  
11 facility.

12 (3) Warrant service, processing, and detainer.

13 (4) Inventory of an arrestee’s money and creation of cash  
14 accounts.

15 (5) Inventory and storage of an arrestee’s property.

16 (6) Inventory, laundry, and storage of an arrestee’s clothing.

17 (7) The classification of an arrestee.

18 (8) The direct costs of automated services utilized in  
19 paragraphs (1) to (7), inclusive.

20 (9) Unit management and supervision of the detention function  
21 as related to paragraphs (1) to (8), inclusive.

22 (f) An administrative screening fee of twenty-five dollars (\$25)  
23 shall be collected from each person arrested and released on his or  
24 her own recognizance upon conviction of any criminal offense  
25 related to the arrest other than an infraction. A citation processing  
26 fee in the amount of ten dollars (\$10) shall be collected from each  
27 person cited and released by any peace officer in the field or at a  
28 jail facility upon conviction of any criminal offense, other than an  
29 infraction, related to the criminal offense cited in the notice to  
30 appear. However, the court may determine a lesser fee than  
31 otherwise provided in this subdivision upon a showing that the  
32 defendant is unable to pay the full amount. All fees collected  
33 pursuant to this subdivision shall be transmitted by the county  
34 auditor monthly to the Controller for deposit in the General Fund.  
35 This subdivision applies only to convictions occurring on or after  
36 the effective date of the act adding this subdivision and prior to  
37 June 30, 1996.

38 SEC. 167. Section 30061 of the Government Code is  
39 amended to read:



30061. (a) There shall be established in each county treasury a Supplemental Law Enforcement Services Fund (SLESF), to receive all amounts allocated to a county for purposes of implementing this chapter.

(b) In any fiscal year for which a county receives ~~money~~ *moneys* to be expended for the implementation of this chapter, the county auditor shall allocate moneys in the county's SLESF, including any interest or other return earned on the investment of those moneys, within 30 days of the deposit of those moneys into the fund, and shall allocate those moneys in accordance with the requirements set forth in this subdivision. However, the auditor shall not transfer those moneys to a recipient agency until the Supplemental Law Enforcement Oversight Committee certifies receipt of an approved expenditure plan from the governing board of that agency.

(1) Five and fifteen one-hundredths percent (~~5.15%~~) to the county sheriff for county jail construction and operation. In the case of Madera, Napa, and Santa Clara Counties, this allocation shall be made to the county director or chief of corrections.

(2) Five and fifteen one hundredths percent (~~5.15%~~) to the district attorney for criminal prosecution.

(3) Thirty-nine and seven-tenths percent (~~39.7%~~) to the county and the cities within the county, and, in the case of San Mateo, Kern, Siskiyou, and Contra Costa Counties, also to the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, and the Kensington Police Protection and Community Services District, in accordance with the relative population of the cities within the county and the unincorporated area of the county, and the Broadmoor Police Protection District in the County of San Mateo, the Bear Valley Community Services District and the Stallion Springs Community Services District in Kern County, the Lake Shastina Community Services District in Siskiyou County, and the Kensington Police Protection and Community Services District in Contra Costa County, as specified in the most recent January estimate by the population research unit of the Department of Finance, and as adjusted to provide a grant of at least one hundred thousand dollars (\$100,000) to each law enforcement jurisdiction. For a newly incorporated city whose population estimate is not published by

1 the Department of Finance, but ~~which~~ *that* was incorporated prior  
2 to July 1 of the fiscal year in which an allocation from the SLESF  
3 is to be made, the city manager, or an appointee of the legislative  
4 body, if a city manager is not available, and the county  
5 administrative or executive officer shall prepare a joint  
6 notification to the Department of Finance and the county auditor  
7 with a population estimate reduction of the unincorporated area of  
8 the county equal to the population of the newly incorporated city  
9 by July 15, or within 15 days after the Budget Act is enacted, of  
10 the fiscal year in which an allocation from the SLESF is to be  
11 made. No person residing within the Broadmoor Police Protection  
12 District, the Bear Valley Community Services District, the Stallion  
13 Springs Community Services District, the Lake Shastina  
14 Community Services District, or the Kensington Police Protection  
15 and Community Services District shall also be counted as residing  
16 within the unincorporated area of the County of San Mateo, Kern,  
17 Siskiyou, or Contra Costa, or within any city located within those  
18 counties. The county auditor shall allocate a grant of at least one  
19 hundred thousand dollars (\$100,000) to each law enforcement  
20 jurisdiction. Moneys allocated to the county pursuant to this  
21 subdivision shall be retained in the county SLESF, and moneys  
22 allocated to a city pursuant to this subdivision shall be deposited  
23 in a SLESF established in the city treasury.

24 (4) Fifty percent ~~(50%)~~ to the county or city and county to  
25 implement a comprehensive multiagency juvenile justice plan as  
26 provided in this paragraph and to the Board of Corrections for  
27 administrative purposes. Funding for the Board of Corrections, as  
28 determined by the Department of Finance, shall not exceed two  
29 hundred seventy-five thousand dollars (\$275,000). For the  
30 2003–04 fiscal year, of the two hundred seventy-five thousand  
31 dollars (\$275,000), up to one hundred seventy-six thousand  
32 dollars (\$176,000) may be used for juvenile facility inspections.  
33 The juvenile justice plan shall be developed by the local juvenile  
34 justice coordinating council in each county and city and county  
35 with the membership described in Section 749.22 of the Welfare  
36 and Institutions Code. If a plan has been previously approved by  
37 the Board of Corrections, the plan shall be reviewed and modified  
38 annually by the council. The plan or modified plan shall be  
39 approved by the county board of supervisors, and in the case of a  
40 city and county, the plan shall also be approved by the mayor. The

1 plan or modified plan shall be submitted to the Board of  
2 Corrections by May 1, 2002, and annually thereafter.

3 (A) Juvenile justice plans shall include, but not be limited to,  
4 all of the following components:

5 (i) An assessment of existing law enforcement, probation,  
6 education, mental health, health, social services, drug and alcohol,  
7 and youth services resources that specifically target at-risk  
8 juveniles, juvenile offenders, and their families.

9 (ii) An identification and prioritization of the neighborhoods,  
10 schools, and other areas in the community that face a significant  
11 public safety risk from juvenile crime, such as gang activity,  
12 daylight burglary, late-night robbery, vandalism, truancy,  
13 controlled substances sales, firearm-related violence, and juvenile  
14 substance abuse and alcohol use.

15 (iii) A local juvenile justice action strategy that provides for a  
16 continuum of responses to juvenile crime and delinquency and  
17 demonstrates a collaborative and integrated approach for  
18 implementing a system of swift, certain, and graduated responses  
19 for at-risk youth and juvenile offenders.

20 (iv) Programs identified in clause (iii) that are proposed to be  
21 funded pursuant to this subparagraph, including the projected  
22 amount of funding for each program.

23 (B) Programs proposed to be funded shall satisfy all of the  
24 following requirements:

25 (i) Be based on programs and approaches that have been  
26 demonstrated to be effective in reducing delinquency and  
27 addressing juvenile crime for any elements of response to juvenile  
28 crime and delinquency, including prevention, intervention,  
29 suppression, and incapacitation.

30 (ii) Collaborate and integrate services of all the resources set  
31 forth in clause (i) of subparagraph (A), to the extent appropriate.

32 (iii) Employ information sharing systems to ensure that county  
33 actions are fully coordinated, and designed to provide data for  
34 measuring the success of juvenile justice programs and strategies.

35 (iv) Adopt goals related to the outcome measures that shall be  
36 used to determine the effectiveness of the local juvenile justice  
37 action strategy.

38 (C) The plan shall also identify the specific objectives of the  
39 programs proposed for funding and specified outcome measures  
40 to determine the effectiveness of the programs and an accounting

1 for all program participants, including those who do not complete  
2 the programs. Outcome measures of the programs proposed to be  
3 funded shall include, but not be limited to, all of the following:  
4 (i) The rate of juvenile arrests per 100,000 population.  
5 (ii) The rate of successful completion of probation.  
6 (iii) The rate of successful completion of restitution and  
7 court-ordered community service responsibilities.  
8 (iv) Arrest, incarceration, and probation violation rates of  
9 program participants.  
10 (v) Quantification of the annual per capita costs of the program.  
11 (D) The Board of Corrections shall review plans or modified  
12 plans submitted pursuant to this paragraph within 30 days upon  
13 receipt of submitted or resubmitted plans or modified plans. The  
14 board shall approve only those plans or modified plans that fulfill  
15 the requirements of this paragraph, and shall advise a submitting  
16 county or city and county immediately upon the approval of its  
17 plan or modified plan. The board shall offer, and provide if  
18 requested, technical assistance to any county or city and county  
19 that submits a plan or modified plan not in compliance with the  
20 requirements of this paragraph. The SLESF shall only allocate  
21 funding pursuant to this paragraph upon notification from the  
22 board that a plan or modified plan has been approved.  
23 (E) To assess the effectiveness of programs funded pursuant to  
24 this paragraph using the program outcome criteria specified in  
25 subparagraph (C), the following periodic reports shall be  
26 submitted:  
27 (i) Each county or city and county shall report, beginning  
28 October 15, 2002, and annually each October 15 thereafter, to the  
29 county board of supervisors and the Board of Corrections, in a  
30 format specified by the Board of Corrections, on the programs  
31 funded pursuant to this chapter and program outcomes as specified  
32 in subparagraph (C).  
33 (ii) The Board of Corrections shall compile the local reports  
34 and, by March 15, 2003, and annually thereafter, make a report to  
35 the Governor and the Legislature on program expenditures within  
36 each county and city and county from the appropriation for the  
37 purposes of this paragraph, on the outcomes as specified in  
38 subparagraph (C) of the programs funded pursuant to this  
39 paragraph and the statewide effectiveness of the comprehensive  
40 multiagency juvenile justice plans.



(c) Subject to subdivision (d), for each fiscal year in which the county, each city, the Broadmoor Police Protection District, the Bear Valley Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, and the Kensington Police Protection and Community Services District receive moneys pursuant to paragraph (3) of subdivision (b), the county, each city, and each district specified in this subdivision shall appropriate those moneys in accordance with the following procedures:

(1) In the case of the county, the county board of supervisors shall appropriate existing and anticipated moneys exclusively to provide frontline law enforcement services, other than those services specified in paragraphs (1) and (2) of subdivision (b), in the unincorporated areas of the county, in response to written requests submitted to the board by the county sheriff and the district attorney. Any request submitted pursuant to this paragraph shall specify the frontline law enforcement needs of the requesting entity, and those personnel, equipment, and programs that are necessary to meet those needs. The board shall, at a public hearing held at a time determined by the board in each year that the Legislature appropriates funds for purposes of this chapter, or within 30 days after a request by a recipient agency for a hearing if the funds have been received by the county from the state prior to that request, consider and determine each submitted request within 60 days of receipt, pursuant to the decision of a majority of a quorum present. The board shall consider these written requests separate and apart from the process applicable to proposed allocations of the county general fund.

(2) In the case of a city, the city council shall appropriate existing and anticipated moneys exclusively to fund frontline municipal police services, in accordance with written requests submitted by the chief of police of that city or the chief administrator of the law enforcement agency that provides police services for that city. These written requests shall be acted upon by the city council in the same manner as specified in paragraph (1) for county appropriations.

(3) In the case of the Broadmoor Police Protection District within the County of San Mateo, the Bear Valley Community Services District or the Stallion Springs Community Services District within Kern County, the Lake Shastina Community

1 Services District within Siskiyou County, or the Kensington  
2 Police Protection and Community Services District within Contra  
3 Costa County, the legislative body of that special district shall  
4 appropriate existing and anticipated moneys exclusively to fund  
5 frontline municipal police services, in accordance with written  
6 requests submitted by the chief administrator of the law  
7 enforcement agency that provides police services for that special  
8 district. These written requests shall be acted upon by the  
9 legislative body in the same manner specified in paragraph (1) for  
10 county appropriations.

11 (d) For each fiscal year in which the county, a city, or the  
12 Broadmoor Police Protection District within the County of San  
13 Mateo, the Bear Valley Community Services District or the  
14 Stallion Springs Community Services District within Kern  
15 County, the Lake Shastina Community Services District within  
16 Siskiyou County, or the Kensington Police Protection and  
17 Community Services District within Contra Costa County  
18 receives any moneys pursuant to this chapter, in no event shall the  
19 governing body of any of those recipient agencies subsequently  
20 alter any previous, valid appropriation by that body, for that same  
21 fiscal year, of moneys allocated to the county or city pursuant to  
22 paragraph (3) of subdivision (b).

23 (e) Funds received pursuant to subdivision (b) shall be  
24 expended or encumbered in accordance with this chapter no later  
25 than June 30 of the following fiscal year. A local agency that has  
26 not met this requirement shall remit unspent SLESF moneys to the  
27 Controller for deposit into the General Fund.

28 (f) If a county, a city, a city and county, or a qualifying special  
29 district does not comply with the requirements of this chapter to  
30 receive an SLESF allocation, the Controller shall revert those  
31 funds to the General Fund.

32 SEC. 168. Section 31520.5 of the Government Code is  
33 amended to read:

34 31520.5. (a) Notwithstanding Section 31520.1, in any  
35 county subject to Articles 6.8 (commencing with Section 31639)  
36 and 7.5 (commencing with Section 31662.2), the board of  
37 retirement may, by majority vote, appoint, from a list of nominees  
38 submitted by a qualified ~~retired~~ *retiree* organization, an alternate  
39 retired member to the office of the eighth member, who shall serve  
40 until the expiration of the current term of the current eighth



1 member. Thereafter, the alternate retired member shall be elected  
2 separately by the retired members of the association in the same  
3 manner and at the same time as the eighth member is elected. An  
4 organization shall be deemed to be a “qualified retiree  
5 organization” for purposes of this subdivision if a majority of the  
6 members of the organization are retired members of the system.

7 (b) The term of office of the alternate retired member shall run  
8 concurrently with the term of office of the eighth member. The  
9 alternate retired member shall vote as a member of the board only  
10 in the event the eighth member is absent from a board meeting for  
11 any cause. If there is a vacancy with respect to the eighth member,  
12 the alternate retired member shall fill that vacancy until a  
13 successor qualifies. The alternate retired member shall be entitled  
14 to the same compensation as the eighth member only if the  
15 alternate retired member is present and acting for the eighth  
16 member during the entire meeting.

17 (c) If this section is made applicable in any county, by the  
18 appointment of an alternate eighth member, the alternate safety  
19 member may not sit and act for the eighth member.

20 SEC. 169. Section 31755 of the Government Code is  
21 amended to read:

22 31755. (a) (1) The Board of Supervisors of Contra Costa  
23 County may make this section, Tier Three, applicable to officers  
24 and employees for whom it is the governing body, by adopting an  
25 ordinance specifying the future operative date of its application.

26 (2) As used in this section, “Tier One” refers to the retirement  
27 plan covering general members not covered by Section 31751.

28 (3) After the board of supervisors has adopted an ordinance, the  
29 governing body of a district not governed by the board of  
30 supervisors may make this section applicable as Tier Three to its  
31 officers and employees on and after the future operative date it  
32 specifies.

33 (b) Except as otherwise provided in this section, this section  
34 shall cover all officers and employees who are members or return  
35 to membership in the county’s Tier Two retirement system  
36 established by Section 31751 on or after the operative date  
37 specified in the ordinance adopted pursuant to subdivision (a), and  
38 in a district on or after the date of its applicability thereto.

39 (c) (1) This section shall not cover any employee who is in, or  
40 eligible for, Tier One or safety membership under this chapter.



(2) This section shall not cover any person who is a member of the retirement system in the county or district on or after the operative date of its application thereto unless and until the person voluntarily in writing irrevocably elects coverage.

(3) This section shall not be applicable to any eligible member who does not elect coverage, is then laid off or terminates employment, regardless of whether voluntarily or involuntarily, and later returns to membership employment.

(4) This section shall not be applicable to any eligible member who does not elect coverage, then retires or becomes a deferred member, and later returns to active membership.

(5) This section shall not be applicable to any person referred to in subparagraph (D) of paragraph (2) of subdivision (d) who does not elect coverage.

(d) Upon adoption of this section by the board of supervisors, the following provisions shall become applicable:

(1) Subject to the provisions of paragraph (2) of subdivision (d), any qualified individual county or district employee may irrevocably elect coverage under Tier Three.

(2) (A) County or district employees who are members of the county's Tier Two retirement system and who have attained five ~~years~~ years' retirement credited service to the county or district on the applicable date of this section, must elect Tier Three coverage in writing within six months after that date.

(B) Persons not ~~under~~ *subject to* subparagraph (A), who thereafter attain five ~~years~~ years' credited service in the county's Tier Two retirement system, must elect Tier Three coverage in writing within 90 days after attaining the five years' retirement credited service.

(C) Persons not ~~under~~ *subject to* subparagraph (A) or (B), who, before the Tier Three applicability date, elected deferred retirement under Article 9 (commencing with Section 31700) from the county's Tier Two retirement system, and who had at least five ~~years~~ years' credited Tier Two retirement service, and who thereafter while still in deferred status return to active membership, must elect coverage in writing ~~with~~ *within* 90 days after that return.

(D) Persons not under ~~subparagraphs~~ *subparagraph* (A), (B), or (C), who enter or reenter employment in the county or the district for the first time after Tier Three is applicable thereto, and

1 who have reciprocal rights under Article 15 (commencing with  
2 Section 31830), and who are otherwise eligible to elect Tier Three  
3 by virtue of their Tier Two status and years of retirement credited  
4 service must elect Tier Three coverage in writing within 90 days  
5 after that entry or reentry.

6 (e) The board may not grant a disability retirement allowance  
7 to a person who has become a Tier Three member except as  
8 provided in Section 31720.1. The amount of disability retirement  
9 allowances under Tier Three shall be as set forth in Section  
10 31727.01.

11 (f) Notwithstanding any other provision of this chapter, service  
12 retirements under Tier Three shall be governed by the same  
13 provisions ~~which~~ *that* govern Tier One retirements in Contra  
14 Costa County.

15 (g) Notwithstanding any other provision of this chapter, Tier  
16 Three retired members who have retired for service shall only be  
17 entitled to cost-of-living adjustments as provided by the board of  
18 supervisors for Tier One retired members pursuant to Article 16.5  
19 (commencing with Section 31830).

20 (h) Notwithstanding any other provision of this chapter, Tier  
21 Three retired members who have been retired for disability shall  
22 only be entitled to cost-of-living adjustments as provided by the  
23 board of supervisors for Tier Two retired members pursuant to  
24 Article 16.5 (commencing with Section 31830).

25 ~~(h)~~

26 (i) The board of supervisors may adopt regulations to  
27 implement the provisions of this section.

28 SEC. 170. Section 31762 of the Government Code is  
29 amended to read:

30 31762. Optional settlement 2 consists of the right to elect in  
31 writing to have a retirement allowance ~~and~~ paid *to* him or her until  
32 his or her death, and thereafter to the person, having an insurable  
33 interest in his or her life, as he or she nominates by written  
34 designation duly executed and filed with the board at the time of  
35 his or her retirement.

36 SEC. 171. Section 31776.3 of the Government Code is  
37 amended to read:

38 31776.3. (a) Unless the implementing ordinance otherwise  
39 provides, the balance in the participant's program account shall be  
40 distributed to the participant in a single lump-sum payment at the

1 time of retirement. If requested by the participant, the payment  
2 may be immediately deposited into a qualified tax-deferred  
3 account established by the participant.

4 (b) The implementing ordinance may provide one or more of  
5 the following optional forms of distribution for a participant's  
6 account:

7 (1) Substantially level installment payments over 240 months  
8 starting with the date that the member leaves DROP. The balance  
9 in the participant's account during the installment payout period  
10 shall be credited with interest at the same rate, if any, as is being  
11 credited to program accounts for currently active members. A  
12 cost-of-living adjustment may not be made to the monthly amount  
13 being paid pursuant to this paragraph.

14 (2) An annuity in a form established by the board and subject  
15 to the applicable provisions of the Internal Revenue Code that shall  
16 be the actuarial equivalent of the balance in the participant's  
17 program account on the retirement date. The "actuarial  
18 equivalent" under this paragraph shall be determined on the same  
19 basis as is used for determining optional settlements at retirement  
20 for a member's monthly retirement allowance.

21 (c) Notwithstanding any other provision of this article, a  
22 participant, nonparticipant spouse, or beneficiary may not be  
23 permitted to elect a distribution under this article that does not  
24 satisfy the requirements of Section 401(a)(9) of Title 26 of the  
25 United ~~State~~ *States* Code, including the incidental death benefit  
26 requirements of Section 401(a)(9)(G) and the regulations  
27 thereunder.

28 (d) The required beginning date of distributions that reflect the  
29 entire interest of the participant shall be as follows:

30 (1) In the case of a lump-sum distribution to the participant, the  
31 lump-sum payment shall be made, at the participant's option, not  
32 later than April 1 of the calendar year following the later of the  
33 calendar year in which the participant attains the age of 70 and  
34 one-half years (or age determined by the Internal Revenue  
35 Service) or the calendar year in which the participant terminates  
36 all employment for the employer.

37 (2) In the case of a distribution to the participant in the form of  
38 installment payments or an annuity, payment shall begin, at the  
39 participant's option, not later than April 1 of the calendar year  
40 following the later of the calendar year in which the participant

1 attains age 70 and one-half years (or age determined by the Internal  
2 Revenue Service) or the calendar year in which the participant  
3 terminates all employment subject to coverage by the plan.

4 (3) In the case of a benefit payable on account of the  
5 participant's death, distribution shall be paid at the option of the  
6 beneficiary, no later than December 31 of the calendar year in  
7 which the first anniversary of the participant's date of death occurs  
8 unless the beneficiary is the participant's spouse in which case  
9 distributions shall commence on or before the later of either *of the*  
10 *following*:

11 (A) December 31 of the calendar year immediately following  
12 the calendar year in which the participant dies.

13 (B) December 31 of the calendar year in which the participant  
14 would have attained the age of 70 and one-half years (or age  
15 determined by the Internal Revenue Service).

16 SEC. 172. Section 50061 of the Government Code is  
17 amended to read:

18 50061. (a) The ordinance or resolution shall establish  
19 uniform assessment rates based on the costs of providing the  
20 maintenance or improvement by the district. The assessment shall  
21 be related to the benefits to the property assessed. The maximum  
22 amount that may be assessed for habitat maintenance on any lot or  
23 parcel for purposes of paying costs incurred in 1994 for long-term  
24 maintenance of natural habitat pursuant to this article shall not  
25 exceed twenty-five dollars (\$25). For subsequent years, the  
26 maximum amount that may be assessed for this purpose shall not  
27 exceed twenty-five dollars (\$25) increased by the percentage  
28 increase in the California Consumer Price Index between  
29 December 1993 and December of the year prior to the year of the  
30 assessment. The total amount assessed shall not exceed the  
31 anticipated actual costs of the authorized maintenance of natural  
32 habitat.

33 (b) Notwithstanding subdivision (a), land that is devoted  
34 primarily to agricultural, timber, or livestock uses and ~~which that~~  
35 is being used for the commercial production of agricultural,  
36 timber, or livestock products may be subject to an assessment by  
37 a district for the acquisition, construction, or operation and  
38 maintenance of natural habitat pursuant to this article only if the  
39 legislative body makes both of the following determinations:

1 (1) The agricultural, timber, or livestock land will be specially  
2 benefited by the natural habitat. The determination shall identify  
3 the nature of the benefit to the land.

4 (2) Agricultural, timber, or livestock uses or practices will be  
5 eliminated in a manner that will adversely affect the habitat area  
6 or the flora or fauna that the natural habitat is intended to protect,  
7 or the owner of the land has agreed to the assessment. No land is  
8 subject to an assessment until its agricultural, timber, or livestock  
9 use is eliminated or until the owner consents to the assessment,  
10 whichever occurs first.

11 (c) Division 4.5 (commencing with Section 3100) of the Streets  
12 and ~~Highway~~ *Highways* Code applies to proceedings in which the  
13 legislative body determines to issue bonds or notes pursuant to  
14 Section 50068, or to finance a long-term natural habitat  
15 maintenance program in a district, and may be applied to any other  
16 proceedings pursuant to this article at the discretion of the  
17 legislative body.

18 SEC. 173. Section 53088.2 of the Government Code is  
19 amended to read:

20 53088.2. (a) Every video provider shall render reasonably  
21 efficient service, make repairs promptly, and interrupt service only  
22 as necessary.

23 (b) All video provider personnel contacting subscribers or  
24 potential subscribers outside the office of the provider shall be  
25 clearly identified as associated with the video provider.

26 (c) At the time of installation, and annually thereafter, all video  
27 providers shall provide to all customers a written notice of the  
28 programming offered, the prices for that programming, the  
29 provider's installation and customer service policies, and the  
30 name, address, and telephone number of the local franchising  
31 authority.

32 (d) All video providers shall have knowledgeable, qualified  
33 company representatives available to respond to customer  
34 telephone inquiries Monday ~~through~~ to Friday, *inclusive*,  
35 excluding holidays, during normal business hours.

36 (e) All video providers shall provide to customers a toll-free or  
37 local telephone number for installation, and service, and complaint  
38 calls. These calls shall be answered promptly by the video  
39 providers. The city, county, or city and county may establish  
40 standards for what constitutes promptness.

1 (f) All video providers shall render bills ~~which~~ *that* are accurate  
2 and understandable.

3 (g) All video providers shall respond to a complete outage in  
4 a customer's service promptly. The response shall occur within 24  
5 hours of the reporting of ~~such~~ *the* outage to the provider, except in  
6 those situations beyond the reasonable control of the video  
7 provider. A video provider shall be deemed to respond to a  
8 complete outage when a company representative arrives at the  
9 outage location within 24 hours and begins to resolve the problem.

10 (h) All video providers shall provide a minimum of 30 days'  
11 written notice before increasing rates or deleting channels. All  
12 video providers shall make every reasonable effort to submit the  
13 notice to the city, county, or city and county in advance of the  
14 distribution to customers. The 30-day notice is waived if the  
15 increases in rates or deletion of channels were outside the control  
16 of the video provider. In those cases the video provider shall make  
17 reasonable efforts to provide customers with as much notice as  
18 possible.

19 (i) Every video provider shall allow every residential customer  
20 who pays his or her bill directly to the video provider at least 15  
21 days from the date the bill for services is mailed to the customer,  
22 to pay the listed charges unless otherwise agreed to pursuant to a  
23 residential rental agreement establishing tenancy. Customer  
24 payments shall be posted promptly. No video provider may  
25 terminate residential service for nonpayment of a delinquent  
26 account unless the video provider furnishes notice of the  
27 delinquency and impending termination at least 15 days prior to  
28 the proposed termination. The notice shall be mailed, postage  
29 prepaid, to the customer to whom the service is billed. Notice shall  
30 not be mailed until the 16th day after the date the bill for services  
31 was mailed to the customer. The notice of delinquency and  
32 impending termination may be part of a billing statement. No  
33 video provider may assess a late fee any earlier than the 22nd day  
34 after the bill for service has been mailed.

35 (j) Every notice of termination of service pursuant to  
36 subdivision (i) shall include all of the following information:

37 (1) The name and address of the customer whose account is  
38 delinquent.

39 (2) The amount of the delinquency.

1 (3) The date by which payment is required in order to avoid  
2 termination of service.

3 (4) The telephone number of a representative of the video  
4 provider who can provide additional information and handle  
5 complaints or initiate an investigation concerning the service and  
6 charges in question.

7 Service may only be terminated on days in which the customer  
8 can reach a representative of the video provider either in person or  
9 by telephone.

10 (k) Any service terminated without good cause shall be  
11 restored without charge for the service restoration. Good cause  
12 includes, but is not limited to, failure to pay, payment by check for  
13 which there are insufficient funds, theft of service, abuse of  
14 equipment or system personnel, or other similar subscriber  
15 actions.

16 (l) All video providers shall issue requested refund checks  
17 promptly, but no later than 45 days following the resolution of any  
18 dispute, and following the return of the equipment supplied by the  
19 video provider, if service is terminated.

20 (m) All video providers shall issue security or customer deposit  
21 refund checks promptly, but no later than 45 days following the  
22 termination of service, less any deductions permitted by law.

23 (n) Video providers shall not disclose the name and address of  
24 a subscriber for commercial gain to be used in mailing lists or for  
25 other commercial purposes not reasonably related to the conduct  
26 of the businesses of the video providers or their affiliates, unless  
27 the video providers have provided to the subscriber a notice,  
28 separate or included in any other customer notice, that clearly and  
29 conspicuously describes the subscriber's ability to prohibit the  
30 disclosure. Video providers shall provide an address and telephone  
31 number for a local subscriber to use without toll charge to prevent  
32 disclosure of the subscriber's name and address.

33 (o) Disputes concerning the provisions of this article shall be  
34 resolved by the city, county, or city and county in which the  
35 customer resides. For video providers under Section 53066, the  
36 franchising authority shall resolve disputes. All other video  
37 providers shall register with the city in which they provide service  
38 or, where the customers reside in an unincorporated area, in the  
39 county in which they provide service. The registration shall  
40 include the name of the company, its address, its officers,



1 telephone numbers, and customer service and complaint  
2 procedures. Counties and cities may charge these other video  
3 providers operating in the state a fee to cover the reasonable cost  
4 of administering this division.

5 (p) Nothing in this division limits any power of a city, county,  
6 or city and county or video provider to adopt and enforce service  
7 standards and consumer protection standards ~~which~~ *that* exceed  
8 those established in this division.

9 (q) The legislative body of the city, county, or city and county,  
10 may, by ordinance, provide a schedule of penalties for the material  
11 breach by a video provider of subdivisions (a) to ~~(n)~~ *(p)*, inclusive.  
12 No monetary penalties shall be assessed for a material breach  
13 ~~where if~~ the breach is out of the reasonable control of the video  
14 provider. Further, no monetary penalties may be imposed prior to  
15 the effective date of this section. Any schedule of monetary  
16 penalties adopted pursuant to this section shall in no event exceed  
17 two hundred dollars (\$200) for each day of each material breach,  
18 not to exceed six hundred dollars (\$600) for each occurrence of  
19 material breach. However, ~~where if~~ a material breach of any of  
20 subdivisions (a) to ~~(n)~~ *(p)*, inclusive, has occurred and the city,  
21 county, or city and county has provided notice and a fine or penalty  
22 has been assessed, in a subsequent material breach of the same  
23 nature occurring within 12 months, the penalties may be increased  
24 by the city, county, or city and county to a maximum of four  
25 hundred dollars (\$400) for each day of each material breach, not  
26 to exceed ~~twelve~~ *one thousand two* hundred dollars (\$1,200) for  
27 each occurrence of the material breach. ~~Where If~~ a third or further  
28 material breach of the same nature occurs within those same 12  
29 months, and the city, county, or city and county has provided  
30 notice and a fine or penalty has been assessed, the penalties may  
31 be increased to a maximum of one thousand dollars (\$1,000) for  
32 each day of each material breach, not to exceed three thousand  
33 dollars (\$3,000) for each occurrence of the material breach. With  
34 respect to video providers subject to a franchise or license, any  
35 monetary penalties assessed under this section shall be reduced  
36 dollar for dollar to the extent any liquidated damage or penalty  
37 provision of a current cable television ordinance, franchise  
38 contract, or license agreement imposes a monetary obligation  
39 upon a video provider for the same customer service failures, and  
40 no other monetary damages may be assessed. However, this

1 section shall in no way affect the right of franchising authorities  
2 concerning assessment or renewal of a cable television franchise  
3 under the provisions of the Cable Communications Policy Act of  
4 1984 (*47 U.S.C. Sec. 521 et seq.*).

5 (r) If the legislative body of a city, county, or city and county  
6 adopts a schedule of monetary penalties pursuant to subdivision  
7 ~~(q)~~ (q), the following procedures shall be followed:

8 (1) The city, county, or city and county shall give the video  
9 provider written notice of any alleged material breaches of the  
10 consumer service standards of this division and allow the video  
11 provider at least 30 days from receipt of the notice to remedy the  
12 specified breach.

13 (2) A material breach for the purposes of assessing penalties  
14 shall be deemed to have occurred for each day, following the  
15 expiration of the period specified in paragraph (1), that any  
16 material breach has not been remedied by the video provider,  
17 irrespective of the number of customers affected.

18 (s) Notwithstanding subdivision ~~(m)~~ (o), or any other  
19 provision of law, this section shall not preclude a party affected by  
20 this section from utilizing any judicial remedy available to that  
21 party without regard to this section. Actions taken by a local  
22 legislative body, including a franchising authority, pursuant to this  
23 section shall not be binding upon a court of law. For this purpose  
24 a court of law may conduct de novo review of any issues presented.

25 SEC. 174. Section 53895.5 of the Government Code is  
26 amended to read:

27 53895.5. (a) An officer of a community redevelopment  
28 agency who fails or refuses to make and file his or her report within  
29 20 days after receipt of a written notice of the failure from the  
30 Controller shall forfeit to the state:

31 (1) One thousand dollars (\$1,000) in the case of a community  
32 redevelopment agency with total revenue, in the prior year, of less  
33 than one hundred thousand dollars (\$100,000), as reported in the  
34 Controller's annual financial reports.

35 (2) Two thousand five hundred dollars (\$2,500) in the case of  
36 a community redevelopment agency with total revenue, in the  
37 prior year, of at least one hundred thousand dollars (\$100,000), but  
38 less than two hundred fifty thousand dollars (\$250,000), as  
39 reported in the Controller's annual financial reports.

1 (3) Five thousand dollars (\$5,000) in the case of a community  
2 redevelopment agency with total revenue, in the prior year, of at  
3 least two hundred fifty thousand dollars (\$250,000), as reported in  
4 the Controller's annual financial reports.

5 (b) An officer of a community redevelopment agency who fails  
6 or refuses to make and file his or her report within 20 days after  
7 receipt of a written notice of the failure from the Controller in the  
8 second or more consecutive year shall forfeit to the state:

9 (1) Two thousand dollars (\$2,000) in the case of a community  
10 redevelopment agency with total revenue, in the prior year, of less  
11 than one hundred thousand dollars (\$100,000), as reported in the  
12 Controller's annual financial reports.

13 (2) Five thousand dollars (\$5,000) in the case of a community  
14 redevelopment agency with total revenue, in the prior year, of at  
15 least one hundred thousand dollars (\$100,000), but less than two  
16 hundred fifty thousand dollars (\$250,000), as reported in the  
17 Controller's annual financial reports.

18 (3) Ten thousand dollars (\$10,000) in the case of a community  
19 redevelopment agency with total revenue, in the prior year, of at  
20 least two hundred fifty thousand dollars (\$250,000), as reported in  
21 the Controller's annual financial reports.

22 (c) In the case of a community redevelopment agency that fails  
23 or refuses to make and file its report within 20 days after receipt  
24 of a written notice of the failure from the Controller in the third or  
25 more consecutive year, the Controller shall conduct or cause to be  
26 conducted an independent financial audit report consistent with  
27 the requirements of Section 33080.1 of the Health and Safety  
28 Code. The community redevelopment agency shall reimburse the  
29 Controller for the cost of complying with this subdivision. The  
30 community redevelopment agency shall not use any of the ~~money~~  
31 *funds* in the Low and Moderate Income Housing Fund to  
32 reimburse the Controller.

33 (d) (1) Upon the request of the Controller, the Attorney  
34 General shall prosecute an action for the forfeiture in the name of  
35 the people of the State of California.

36 (2) Upon a satisfactory showing of good cause, the Controller  
37 may waive the penalties for late filing provided in this section.

38 (e) A community redevelopment agency that makes a  
39 forfeiture or payment pursuant to this section shall still file the  
40 report required pursuant to Section 53891.

1 SEC. 175. Section 54222 of the Government Code is  
2 amended to read:

3 54222. Any agency of the state and any local agency  
4 disposing of surplus land shall, prior to disposing of that property,  
5 send a written offer to sell or lease the property as follows:

6 (a) A written offer to sell or lease for the purpose of developing  
7 low- and moderate-income housing shall be sent to any local  
8 public entity as defined in Section 50079 of the Health and Safety  
9 Code, within whose jurisdiction the surplus land is located.  
10 Housing sponsors, as defined by Section 50074 of the Health and  
11 Safety Code, shall, upon written request, be sent a written offer to  
12 sell or lease surplus land for the purpose of developing low- and  
13 moderate-income housing. All notices shall be sent by first-class  
14 mail and shall include the location and a description of the  
15 property. With respect to any offer to purchase or lease pursuant  
16 to this subdivision, priority shall be given to development of the  
17 land to provide affordable housing for lower income elderly or  
18 disabled persons or households, and other lower income  
19 households.

20 (b) A written offer to sell or lease for park and recreational  
21 purposes or open-space purposes shall be sent:

22 (1) To any park or recreation department of any city within  
23 which the land may be situated.

24 (2) To any park or recreation department of the county within  
25 which the land is situated.

26 (3) To any regional park authority having jurisdiction within  
27 the area in which the land is situated.

28 (4) To the State Resources Agency or any agency which may  
29 succeed to its powers.

30 (c) A written offer to sell or lease land suitable for school  
31 facilities construction or use by a school district for open-space  
32 purposes shall be sent to any school district in whose jurisdiction  
33 the land is located.

34 (d) A written offer to sell or lease for enterprise zone purposes  
35 any surplus property in an area designated as an enterprise zone  
36 pursuant to Section 7073 shall be sent to the nonprofit  
37 neighborhood enterprise association corporation in that zone.

38 (e) A written offer to sell or lease for the purpose of developing  
39 property located within an infill opportunity zone designated  
40 pursuant to Section 65088.4, or within an area covered by a transit

village plan adopted pursuant to the Transit Village Development Planning Act of 1994, ~~Article~~ (Article 8.5 (commencing with Section 65460) of Chapter 3 of Division 1 of Title 7), shall be sent to any county, city, city and county, community redevelopment agency, public transportation agency, or housing authority within whose jurisdiction the surplus land is located.

(f) A written offer to sell or lease any surplus property in a designated program area, as defined in subdivision (i) of Section 7082, shall be sent to the program area agent.

(g) The entity or association desiring to purchase or lease the surplus land for any of the purposes authorized by this section shall notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell *or lease* the land.

SEC. 176. Section 63049.4 of the Government Code is amended to read:

63049.4. (a) On and after the effective date of each sale of tobacco assets, the state shall have no right, title, or interest in or to the tobacco assets sold, and the tobacco assets so sold shall be property of the special purpose trust and not of the state, the bank board, the State Public Works Board, or the bank, and shall be owned, received, held, and disbursed by the special purpose trust or the trustee for the financing. None of the tobacco assets sold by the state pursuant to this article shall be subject to garnishment, levy, execution, attachment, or other process, writ, including, but not limited to, a writ of mandate, or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the state, the bank board, the State Public Works Board, or the bank.

On or before the effective date of any sale, the state, acting through its Attorney General, upon direction of the bank, shall notify the California escrow agent under the Master Settlement Agreement and the California escrow agreement that the sold tobacco assets have been sold to the special purpose trust and irrevocably instruct the California escrow agent that, as of the applicable effective date, the tobacco assets sold are to be paid directly to the trustee for the applicable bonds of the special purpose trust. The state pledges to and agrees with the holders of any bonds issued by the special purpose trust that it will not amend the Master Settlement Agreement, the memorandum of

1 understanding, or the California escrow agreement, or take any  
2 other action, in any way that would alter, limit, or impair the rights  
3 to receive tobacco assets sold to the special purpose trust pursuant  
4 to this article, nor in any way impair the rights and remedies of  
5 bondholders or the security for their bonds until those bonds,  
6 together with the interest thereon and costs and expenses in  
7 connection with any action or proceeding on behalf of the  
8 bondholders, are fully paid and discharged. The state further  
9 pledges and agrees that it shall enforce its rights to collect all  
10 moneys due from the participating tobacco products  
11 manufacturers under the Master Settlement Agreement and, in  
12 addition, shall diligently enforce the model statute as  
13 contemplated in the Master Settlement Agreement (Article 3  
14 (commencing with Section 104555) of Chapter 1 of Part 3 of  
15 Division 103 of the Health and Safety Code) against all tobacco  
16 product manufacturers selling tobacco products in the state and  
17 that are not signatories to the Master Settlement Agreement, in  
18 each case in the manner and to the extent necessary in the judgment  
19 of the Attorney General to collect all moneys to which the state is  
20 entitled under the Master Settlement Agreement. The special  
21 purpose trust may include these pledges and undertakings in its  
22 bonds. Notwithstanding these pledges and undertaking by the  
23 state, the Attorney General may in his or her discretion enforce any  
24 and all provisions of the Master Settlement Agreement, without  
25 limitation.

26 (b) Bonds issued pursuant to this article shall not be deemed to  
27 constitute a debt of the state or a pledge of the faith or credit of the  
28 state, and all bonds shall contain on the face thereof a statement to  
29 the effect that neither the faith and credit nor the taxing power nor  
30 any other assets or revenues of the state or of any political  
31 subdivision thereof, other than the special purpose trust, is or shall  
32 be pledged to the payment of the principal of or the interest on the  
33 bonds.

34 (c) Whether or not the bonds are of a form and character as to  
35 be negotiable instruments under the terms of the Uniform  
36 Commercial Code, the bonds are hereby made negotiable  
37 instruments for all purposes, subject only to the provisions of the  
38 bonds for registration.

39 (d) The special purpose trust and the bank shall be treated as  
40 public agencies for purposes of Chapter 9 (commencing with





Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, and any action or proceeding challenging the validity of any matter authorized by this article shall be brought in accordance with, and within the time specified in, that chapter.

(e) Notwithstanding any other provision of law, the exclusive means to obtain review of a superior court judgment entered in an action brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any bonds to be issued, or any other contracts to be entered into, or any other matters authorized by this article, shall be by petition to the Supreme Court for writ of review. Any ~~such~~ petition shall be filed within 15 days following the notice of entry of the superior court judgment, and no extension of that period may be allowed. If no petition is filed within the time allowed ~~therefor~~ *therefor*, or the petition is denied, with or without opinion, the decision of the superior court shall be final and enforceable as provided in subdivision (a) of Section 870 of the Code of Civil Procedure. In any case in which a petition has been filed within the time allowed *therefor*, the Supreme Court shall make any orders, as it may deem proper in the circumstances. If no answering party appeared in the superior court action, the only issues that may be raised in the petition are those related to the jurisdiction of the superior court.

SEC. 177. Section 65919 of the Government Code is amended to read:

65919. As used in this chapter, the following terms ~~mean~~ *have the following meanings*:

(a) “Affected city” means a city within whose planning review area an affected territory is located.

(b) “Affected territory” means an area of land located in the unincorporated portion of a county ~~which~~ *that* is the subject ~~on~~ *of* one or more proposed actions.

(c) “Proposed action” means a proposal to adopt or amend all or part of a general or specific plan or to adopt or amend a zoning ordinance, but does not include action taken by an ordinance ~~which~~ *that* became effective immediately pursuant to subdivision (b) or (d) of Section 25123 or pursuant to Section 65858.

(d) “Planning review area” means the territory included in a general plan or in any specific plan of a city or county. A planning review area in the case of a city shall not extend beyond whichever



1 of the following includes the largest area and, in the case of a  
2 county, shall not extend beyond the territory described in  
3 ~~paragraphs~~ *paragraph* (2) or (3), whichever includes the largest  
4 area:

5 (1) The area included within the sphere of influence of the city.

6 (2) A radius of one mile outside the boundary of the city which  
7 area shall not include any territory within the sphere of influence  
8 of another city.

9 (3) An area ~~which~~ *that* is agreed upon and designated by a  
10 county and a city within the county.

11 SEC. 178. Section 68085.5 of the Government Code is  
12 amended to read:

13 68085.5. (a) Notwithstanding any other provision of law, the  
14 fees and fines collected pursuant to Sections 116.390, 116.570,  
15 116.760, 116.860, 491.150, 704.750, 708.160, 724.100, 1134, and  
16 1161.2 of the Code of Civil Procedure, Sections 26824, 26828,  
17 26829, 26834, and 72059 of the Government Code, and Section  
18 1835 of the Probate Code, that are not part of a local revenue  
19 sharing agreement or practice shall be deposited in a special  
20 account in the county treasury and transmitted therefrom monthly  
21 to the Controller for deposit in the Trial Court Trust Fund.

22 (b) Notwithstanding any other provision of law, the fees and  
23 fines collected pursuant to Sections 26827.6, 26827.7, 26840.1,  
24 26847, 26854, 26855.1, 26855.2, 26859, 27293, 71386, and  
25 72061 of the Government Code, Section 103470 of the Health and  
26 Safety Code, Sections 1203.4 and 1203.45 of the Penal Code,  
27 Sections 2343, 7660, and 13201 of the Probate Code, and Section  
28 14607.6 of the Vehicle Code, that are not subject to a local revenue  
29 sharing agreement or practice, shall be deposited in a special  
30 account in the county treasury.

31 (c) However, if a superior court incurs the cost or provides the  
32 services specified in subdivision (b), the fees and fines collected  
33 shall be transmitted from the special account in the county treasury  
34 monthly to the Controller for deposit in the Trial Court Trust Fund.

35 (d) (1) Until July 1, 2005, each superior court and each county  
36 shall maintain the distribution of revenue from the fees specified  
37 in subdivisions (a) and (b) that is in effect pursuant to an agreement  
38 or practice that is in place at the time this section takes effect.

39 (2) In order to ensure that expenditures from revenue sharing  
40 agreements are consistent with Judicial Council fiscal and

budgetary policy, the Administrative Director of the Courts shall review and approve all distribution of revenue agreements that are negotiated after the effective date of this section. If approval of an agreement negotiated after the effective date of this section is not granted, the director shall advise the court and county of the reasons for not granting approval and suggest modifications that will make the agreement consistent with the Judicial Council fiscal and budgetary policies.

(e) The Administrative Office of the Courts and the California State Association of Counties shall jointly determine and administer on or after January 1, 2004, and on or after January 1, 2005, all of the following:

(1) The amount of revenue that was deposited in the Trial Court Trust Fund pursuant to ~~subdivision~~ subdivisions (a) and (b) during the calendar year that just ended.

(2) The difference between the amount specified in subdivision (c) and thirty-one million dollars (\$31,000,000).

(3) A county-by-county transfer of the amount specified in paragraph (2) to the Trial Court Trust Fund in two equal installments, on February 15 and May 15, in each fiscal year.

(4) Any payment to correct for an overpayment or underpayment made for the 2003–04 fiscal year, shall be paid to the appropriate party on or before September 15, 2004.

(5) The sum of the amounts specified in paragraphs (1) and (2) may not exceed thirty-one million dollars (\$31,000,000), and shall be deposited in the Trial Court Trust Fund.

(f) Each superior court and each county shall provide detailed quarterly reports of the revenues generated by the fees and fines specified in subdivisions (a) and (b), Sections 177.5 and 1218 of the ~~Civil~~ Code of *Civil* Procedure, and Sections 166 and 1214.1 of the Penal Code. The reports shall include the total amount collected and retained by the court or county and the existing distribution of those fees.

(g) On or before January 1, 2005, the Administrative Office of the Courts and the California State Association of Counties shall jointly propose to the Legislature a long-term revenue allocation schedule, to take effect on July 1, 2005, for the fees and fines specified in subdivisions (a) and (b), Sections 177.5 and 1218 of the ~~Civil~~ Code of *Civil* Procedure, and Sections 166 and 1214.1 of the Penal Code. The revenue allocation schedule shall include

1 provision for any underpayment or overpayment made pursuant to  
2 this section.

3 (h) No other transfers of the fees and fines specified in  
4 subdivisions (a) and (b), Sections 177.5 and 1218 of the Code of  
5 Civil Procedure, and Sections 166 and 1214.1 of the Penal Code  
6 shall take effect prior to July 1, 2005.

7 (i) Nothing in this section shall be deemed to alter or make void  
8 the shift of responsibility for court funding from the counties to the  
9 state.

10 SEC. 179. Section 68086 of the Government Code is  
11 amended to read:

12 68086. (a) The following provisions apply in superior court:

13 (1) In addition to any other fee required in civil actions or cases,  
14 for each proceeding lasting more than one hour, a fee equal to the  
15 actual cost of providing that service shall be charged per one-half  
16 day of services to the parties, on a pro rata basis, for the services  
17 of an official *court* reporter on the first and each succeeding  
18 judicial day those services are provided pursuant to Section 269 of  
19 the Code of Civil Procedure.

20 (2) All parties shall deposit their pro rata shares of these fees  
21 with the clerk of the court as specified by the court, but not later  
22 than the conclusion of each day's court session.

23 (3) For purposes of this section, "one-half day" means any  
24 period of judicial time, in excess of one hour but not more than four  
25 hours, during either the morning or afternoon court session.

26 (4) In addition to the fees authorized by Sections 26820.4,  
27 26826, 72055, and 72056, a one-time fee of twenty-five dollars  
28 (\$25) for the cost of the services of an official *court* reporter shall  
29 be charged upon the filing of a first paper in a civil action or  
30 proceeding in the superior court, unless the amount demanded,  
31 excluding attorney's fees and costs, is ten thousand dollars  
32 (\$10,000) or less. No additional fee shall be charged to a party for  
33 the cost of the services of an official *court* reporter in proceedings  
34 lasting one hour or less.

35 (5) The costs for the services of the official *court* reporter shall  
36 be recoverable as taxable costs by the prevailing party as otherwise  
37 provided by law.

38 (6) The Judicial Council shall adopt rules to ensure all of the  
39 following:



1 (A) That parties are given adequate and timely notice of the  
2 availability of an official *court* reporter.

3 (B) That if an official *court* reporter is not available, a party  
4 may arrange for the presence of a certified shorthand reporter to  
5 serve as an official pro tempore reporter, the costs therefore  
6 recoverable as provided in paragraph (5).

7 (C) That if the services of an official pro tempore reporter are  
8 utilized pursuant to subparagraph (B), no other charge will be  
9 made to the parties.

10 (b) The fees collected pursuant to this section shall ~~only~~ be used  
11 *only* to pay the cost for services of an official *court* reporter in civil  
12 proceedings.

13 (c) The Judicial Council shall report on or before February 1 of  
14 each year to the Joint Legislative Budget Committee on the total  
15 fees collected and the total amount spent for official court reporter  
16 services in civil proceedings in the prior fiscal year.

17 SEC. 180. Section 69927 of the Government Code is  
18 amended to read:

19 69927. (a) It is the intent of the Legislature in enacting this  
20 section to develop a definition of the court security component of  
21 court operations that modifies Function 8 of Rule 810 of the  
22 California Rules of Court in a manner that will standardize billing  
23 and accounting practices and court security plans, and identify  
24 allowable law enforcement security costs after the operative date  
25 of this article. It is not the intent of the Legislature to increase or  
26 decrease the responsibility of a county for the cost of court  
27 operations, as defined in Section 77003 or Rule 810 of the  
28 California Rules of Court, as it read on July 1, 1996, for court  
29 security services provided prior to January 1, 2003. It is the intent  
30 of the Legislature that a sheriff or marshal's court law enforcement  
31 budget may not be reduced as a result of this article. Any new court  
32 security costs permitted by this article shall not be operative unless  
33 the funding is provided by the Legislature.

34 (1) The Judicial Council shall adopt a rule establishing a  
35 working group on court security. The group shall consist of six  
36 representatives from the judicial branch of government, as  
37 selected by the Administrative Director of the Courts, two  
38 representatives of the counties, as selected by the California State  
39 Association of Counties, and three representatives of the county  
40 sheriffs, as selected by the California State Sheriffs' Association.

1 It is the intent of the Legislature that this working group may  
2 recommend modifications only to the template used to determine  
3 that the security costs submitted by the courts to the  
4 Administrative Office of the Courts are permitted pursuant to this  
5 article. The template shall be a part of the trial court's financial  
6 policies and procedures manual and used in place of the definition  
7 of law enforcement costs in Function 8 of Rule 810 of the  
8 California Rules of Court. If the working group determines that  
9 there is a need to make recommendations to the template that  
10 specifically involve law enforcement or security personnel in  
11 courtrooms or court detention facilities, the membership of the  
12 working group shall change and consist of six representatives from  
13 the judicial branch of government selected by the Administrative  
14 Director of the Courts, two representatives of the counties selected  
15 by the California State Association of Counties, two  
16 representatives of the county sheriffs selected by the California  
17 State Sheriffs' Association, and two representatives of labor  
18 selected by the California Coalition of Law Enforcement  
19 Associations.

20 (2) The Judicial Council shall establish a working group on  
21 court security to promulgate recommended uniform standards and  
22 guidelines that may be used by the Judicial Council and any sheriff  
23 or marshal for the implementation of trial court security services.  
24 The working group shall consist of representatives from the  
25 judicial branch of government, the California State Sheriffs'  
26 Association, the California State Association of Counties, the  
27 Peace Officer's Research Association of California, and the  
28 California Coalition of Law Enforcement Associations, for the  
29 purpose of developing guidelines. The Judicial Council, after  
30 requesting and receiving recommendations from the working  
31 group on court security, shall promulgate and implement rules,  
32 standards, and policy directions for the trial courts in order to  
33 achieve efficiencies that will reduce security operating costs and  
34 constrain growth in those costs.

35 (3) When mutually agreed to by the courts, county, and the  
36 sheriff or marshal in any county, the costs of perimeter security in  
37 any building that the court shares with any county agency,  
38 excluding the sheriff or marshal's department, shall be  
39 apportioned based on the amount of the total noncommon square  
40 feet of space occupied by the court and any county agency.



(4) “Allowable costs for equipment, services, and supplies,” as defined in the contract law enforcement template, means the purchase and maintenance of security screening equipment and the ~~cost~~ costs of ammunition, batons, bulletproof vests, handcuffs, holsters, leather gear, chemical spray and holders, radios, radio chargers and holders, uniforms, and one primary duty sidearm.

(5) “Allowable costs for professional support staff for court security operations,” as defined in the contract law enforcement template, means the salary, benefits, and overtime of staff performing support functions that, at a minimum, provide payroll, human resources, information systems, accounting, or budgeting.

Allowable costs for professional support staff for court security operations in each trial court shall not exceed 6 percent of total allowable costs for law enforcement security personnel services in courts ~~whose~~ *with* total allowable costs for law enforcement security personnel services is less than ten million dollars (\$10,000,000) per year. Allowable costs for professional support staff for court security operations for each trial court shall not exceed 4 percent of total allowable costs for law enforcement security personnel services in courts ~~whose~~ *with* total allowable costs for law enforcement security personnel services ~~exceeds~~ *exceeding* ten million dollars (\$10,000,000) per year. Additional costs for services related to court-mandated special project support, beyond those provided for in the contract law enforcement template, are allowable only when negotiated by the trial court and the court law enforcement provider. Allowable costs shall not exceed actual costs of providing support staff services for law enforcement security personnel services.

The working group established pursuant to paragraph (1) of subdivision (a) may periodically recommend changes to the limit for allowable costs for professional support staff for court security operations based on surveys of actual expenditures incurred by trial courts and the court law enforcement provider in the provision of law enforcement security personnel services. Limits for allowable costs as stated in this section shall remain in effect until changes are recommended by the working group and adopted by the Judicial Council.

(6) “Allowable costs for security personnel services,” as defined in the contract law enforcement template, means the salary and benefits of an employee, including, but not limited to, county



1 health and welfare, county incentive payments, deferred  
2 compensation plan costs, FICA or Medicare, general liability  
3 premium costs, leave balance payout commensurate with an  
4 employee's time in court security services as a proportion of total  
5 service credit earned after January 1, 1998, premium pay,  
6 retirement, state disability insurance, unemployment insurance  
7 costs, worker's compensation paid to an employee in lieu of salary,  
8 worker's compensation premiums of supervisory security  
9 personnel through the rank of captain, line personnel, inclusive of  
10 deputies, court attendants, contractual law enforcement services,  
11 prisoner escorts within the courts, and weapons screening  
12 personnel, court required training, and overtime and related  
13 benefits of law enforcement supervisory and line personnel.

14 (A) The Administrative Office of the Courts shall use the actual  
15 salary and benefits costs approved for court law enforcement  
16 personnel as of June 30 of each year in determining the funding  
17 request that will be presented to the Department of Finance.

18 (B) Courts and court security providers shall manage their  
19 resources to minimize the use of overtime.

20 (7) "Allowable costs for vehicle use for court security needs,"  
21 as defined in the contract law enforcement template, means the ~~per~~  
22 ~~mile~~ *per-mile* recovery cost for vehicles used in rendering court  
23 law enforcement services, exclusive of prisoner or detainee  
24 transport to or from court. The standard mileage rate applied  
25 against the miles driven for the above shall be the standard  
26 reimbursable mileage rate in effect for judicial officers and  
27 employees at the time of contract development.

28 (b) Nothing in this article may increase a county's obligation or  
29 require any county to assume the responsibility for a cost of any  
30 service that was defined as a court operation cost, as defined by  
31 Function 8 of Rule 810 of the California Rules of Court, as it read  
32 on July 1, 1996, or that meets the definition of any new law  
33 enforcement component developed pursuant to this article.

34 SEC. 181. Section 71806 of the Government Code is  
35 amended to read:

36 71806. (a) At the conclusion of the regional transition period,  
37 trial courts in the region may employ certified and registered  
38 interpreters to perform spoken language interpretation for the trial  
39 courts in full-time or part-time court interpreter positions created  
40 by the trial courts with the authorization of the regional committee





1 and subject to meet and confer in good faith. The courts may also  
2 continue to employ court interpreters pro tempore.

3 (b) For purposes of hiring interpreters for positions other than  
4 court—~~interpreter~~ *interpreters* pro tempore, unless otherwise  
5 provided in a memorandum of understanding or agreement with  
6 a recognized employee organization, trial courts shall consider  
7 applicants in the following order of priority:

8 (1) Court interpreters pro tempore in the same language who  
9 have performed work for that trial court for at least 150 court days  
10 or parts of court days during each of the past five years, including  
11 time spent performing work for the trial court as an independent  
12 contractor.

13 (2) Court interpreters pro tempore in the same language who  
14 have performed work for that trial court for at least 60 court days  
15 or parts of court days in each of the past five years, including time  
16 spent performing work for the trial court as an independent  
17 contractor.

18 (3) Court interpreters pro tempore in the same language who  
19 have performed work for that trial court for at least 60 court days  
20 or parts of court days in at least two of the past four years, including  
21 time spent as an independent contractor.

22 (4) Other applicants.

23 (c) A trial court may not reject an applicant in favor of an  
24 applicant with lower priority except for cause.

25 (d) For purposes of this section, “for cause” means a fair and  
26 honest cause or reason regulated by good faith on the part of the  
27 party exercising the power.

28 (e) Applicants may be required to provide sufficient  
29 documentation to establish that they are entitled to priority in  
30 hiring. Trial courts shall make their records of past assignments  
31 available to interpreters for purposes of obtaining that  
32 documentation.

33 (f) Unless the parties to a dispute agree upon other procedures  
34 after the dispute arises, or other procedures are provided in a  
35 memorandum of understanding or agreement with a recognized  
36 employee organization, disputes about whether this section has  
37 been violated shall be resolved by binding arbitration through the  
38 California State Mediation and Conciliation Service.

39 (g) Subdivision (b) shall become inoperative on January 1,  
40 2007, unless otherwise provided by a memorandum of

1 understanding or agreement with a recognized employee  
2 organization, and on and after that time hiring shall be in  
3 accordance with the personnel rules of the trial court.

4 SEC. 182. Section 71828 of the Government Code is  
5 amended to read:

6 71828. (a) This chapter does not apply to trial courts in  
7 Solano and Ventura Counties. Labor and employment relations for  
8 court interpreters employed by trial courts in Solano and Ventura  
9 Counties shall remain subject to the Trial Court Employment  
10 Protection and Governance Act, ~~Chapter (Chapter 7~~ (commencing  
11 with Section ~~71600~~ 71600)), and nothing in this chapter shall be  
12 construed to affect the application of ~~the Trial Court Employment~~  
13 ~~Protection and Governance Act, Chapter 7~~ (commencing with  
14 ~~Section 71600~~), that act to court interpreters employed by those  
15 counties.

16 (b) If an interpreter employed by a trial court in a different  
17 county accepts a temporary appointment to perform services for  
18 a trial court in the Solano or Ventura County, the interpreter shall  
19 be treated for purposes of compensation, employee benefits,  
20 seniority, and discipline and grievance procedures, as having  
21 performed the services in the trial court in which the interpreter is  
22 employed.

23 (c) If an interpreter employed by a trial court in Solano or  
24 Ventura County accepts a temporary appointment to perform  
25 services for another trial court, the interpreter shall be treated for  
26 purposes of compensation, employee benefits, seniority, and  
27 discipline and grievance procedures, as having performed the  
28 services in the trial court in which the interpreter is employed.

29 (d) This chapter also does not apply to court interpreters who  
30 have been continuously employed by a trial court in any county  
31 beginning prior to September 1, 2002, and who are covered by a  
32 memorandum of understanding or agreement entered into  
33 pursuant to the Trial Court Employment Protection and  
34 Governance Act, ~~Chapter (Chapter 7~~ (commencing with Section  
35 ~~71600~~ 71600)), and to future employees hired in the same  
36 positions as replacements for those employees. For any other  
37 certified or registered interpreters hired by trial courts as  
38 employees prior to December 31, 2002, the trial courts may not  
39 change existing job classifications and may not reduce their wages

1 and benefits during the regional transition period or during the  
2 term of an existing contract, whichever is longer.

3 SEC. 183. Section 77202 of the Government Code is  
4 amended to read:

5 77202. (a) The Legislature shall make an annual  
6 appropriation to the Judicial Council for the general operations of  
7 the trial courts based on the request of the Judicial Council. The  
8 Judicial Council's trial court budget request shall meet the needs  
9 of all trial courts in a manner ~~which~~ *that* promotes equal access to  
10 the courts statewide. The Judicial Council shall allocate the  
11 appropriation to the trial courts in a manner that best ensures the  
12 ability of the courts to carry out their functions, promotes  
13 implementation of statewide policies, and promotes the immediate  
14 implementation of efficiencies and cost-saving measures in court  
15 operations, in order to guarantee access to justice to citizens of the  
16 state.

17 The Judicial Council shall ensure that its trial court budget  
18 request and the allocations made by it reward each trial court's  
19 implementation of efficiencies and cost-saving measures.

20 These efficiencies and cost-saving measures shall include, but  
21 not be limited to, the following:

22 (1) The sharing or merger of court support staff among trial  
23 courts across counties.

24 (2) The assignment of any type of case to a judge for all  
25 purposes commencing with the filing of the case and regardless of  
26 jurisdictional boundaries.

27 (3) The establishment of a separate calendar or division to hear  
28 a particular type of case.

29 (4) In rural counties, the use of all court facilities for hearings  
30 and trials of all types of cases and the acceptance of filing  
31 documents in any case.

32 (5) The use of alternative dispute resolution programs, such as  
33 arbitration.

34 (6) The development and use of automated accounting and  
35 case-processing systems.

36 (b) (1) The Judicial Council shall adopt policies and  
37 procedures governing practices and procedures for budgeting in  
38 the trial courts in a manner that best ensures the ability of the courts  
39 to carry out their functions and may delegate the adoption to the  
40 Administrative Director of the Courts. The Administrative

1 Director of the Courts shall establish budget procedures and an  
2 annual schedule of budget development and management  
3 consistent with these rules.

4 (2) The Trial Court Policies and Procedures shall specify the  
5 process for a court to transfer existing funds between or among the  
6 budgeted program components to reflect changes in the court's  
7 planned operation or to correct technical errors. If the process  
8 requires a trial court to request approval of a specific transfer of  
9 existing funds, the Administrative Office of the Courts shall  
10 review the request to transfer funds and respond within 30 days of  
11 receipt of the request. The Administrative Office of the Courts  
12 shall respond to the request for approval or denial to the affected  
13 court, in writing, with copies provided to the Department of  
14 Finance, the Legislative—~~Analyst~~ *Analyst's* Office, the  
15 Legislature's budget committees, and the court's affected labor  
16 organizations.

17 (3) The Judicial Council shall circulate for comment to all  
18 affected entities any amendments proposed to the Trial Court  
19 Policies and Procedures as they relate to budget monitoring and  
20 reporting. Final changes shall be adopted at a meeting of the  
21 Judicial Council.

22 SEC. 184. Section 95000 of the Government Code, as added  
23 by Section 4 of Chapter 945 of the Statutes of 1993, is amended  
24 to read:

25 95000. The Legislature finds that disabled and high-risk  
26 infants now survive the newborn period due to greatly improved  
27 surgical and medical care services; ~~however.~~ *However*, in ~~any~~  
28 *many* communities, services ~~which~~ *that* provide the careful  
29 nurturing and stimulation that these infants need to develop to their  
30 potential are not available. The Legislature hereby finds and  
31 declares that individualized early intervention services for infants,  
32 who are at high risk or who have *a* disabling condition, and for  
33 their families, which provide educational, developmental, health,  
34 and social services with active parent involvement, can  
35 significantly reduce the potential impact of many disabling  
36 conditions and positively influence later development when the  
37 child reaches school age.

38 The Legislature further finds that infants have unique needs and  
39 therefore require both a unique service delivery model, which may  
40 be different from any system currently in place in California, and

1 unique program and personnel standards specific to the needs of  
2 infants who are at high risk or who have a disabling condition and  
3 their families.

4 The Legislature further acknowledges that early intervention  
5 services are cost-effective; in that these services frequently make  
6 productive citizens of children and eliminate the far greater costs  
7 of long-term remedial treatment for, and unnecessary lifelong  
8 dependency on, others.

9 SEC. 185. Section 138.6 of the Health and Safety Code is  
10 amended to read:

11 138.6. (a) The department shall include in any literature that  
12 it produces regarding breast cancer information that shall include,  
13 but not be limited to, all of the following:

14 (1) Summarized information on risk factors for breast cancer  
15 in younger women, including, but not limited to, information on  
16 the increased risk associated with a family history of the disease.

17 (2) Summarized information regarding detection alternatives  
18 to mammography that may be available and more effective for  
19 at-risk women between the ages of 25 and 40 years.

20 (3) Information on *Internet* Web sites of relevant organizations,  
21 government agencies, and research institutions where information  
22 on mammography alternatives may be obtained.

23 (b) The information required by subdivision (a) shall be  
24 produced consistent with the department's protocols and  
25 procedures regarding the production and dissemination of  
26 information on breast cancer, including, but not limited to, the  
27 following factors:

28 (1) Restrictions imposed by space limitation on materials  
29 currently produced and distributed by the department.

30 (2) Future regular production and replacement schedules.

31 (3) Translation standards governing the number of languages  
32 and literacy levels.

33 (4) The nature, content, and purpose of the material into which  
34 this new information will be incorporated.

35 (c) It is the intent of the Legislature that subdivisions (a) and (b)  
36 apply to information that is distributed by any branch of the  
37 department, including, but not limited to, the Cancer Detection  
38 Section and the Office of Women's Health, which are charged with  
39 providing information about cancer.

1 SEC. 186. Section 444.20 of the Health and Safety Code is  
2 amended to read:

3 444.20. The Legislature finds and declares all of the  
4 following:

5 (a) The health care delivery system continues to undergo rapid  
6 and dramatic change. Health care services are provided by a  
7 variety of managed care structures, including health maintenance  
8 organizations (HMOs), preferred provider organizations (PPOs),  
9 and an array of hybrid models that have elements of traditional  
10 fee-for-service and indemnity systems while applying managed  
11 care's utilization management, gatekeeper, and case management  
12 techniques. As a result of these changes, many consumers are  
13 confused about how managed care works or have problems  
14 navigating the health care system.

15 (b) The Health Rights Hotline (~~HRH~~) operates in the  
16 Sacramento area to help all health care consumers. The program's  
17 goals are to provide an independent source of information and help  
18 for health care consumers, to collect needed information regarding  
19 health care consumers' problems, and to advocate for health care  
20 system improvements for all consumers. The program is  
21 independent from, but works in close collaboration with, health  
22 plans, providers, purchasers, insurance agents and brokers,  
23 consumer groups, and regulators. The program also works with the  
24 local Health Insurance Counseling and Advocacy Program  
25 (~~HICAP~~), which serves Medicare beneficiaries and those  
26 imminent of becoming eligible for Medicare statewide.

27 (c) The program educates consumers about their health care  
28 rights and responsibilities. It also assists consumers with questions  
29 about their health plans and with specific problems through hotline  
30 and in-person services. In addition, the program collects and  
31 analyzes information, generated both by consumers' use of the  
32 program and from other sources, that can identify the strengths and  
33 weaknesses of particular plans, provider groups, and delivery  
34 systems. The program has informed health plans, providers,  
35 purchasers, consumers, regulators, and the Legislature about how  
36 independent support can be provided to consumers in managed  
37 care.

38 (d) Maintaining consumer confidence is a paramount concern  
39 in the operation of the program. While one vehicle to protect these  
40 communications would be to establish attorney-client

relationships with consumers served, the program is generally not designed as a “legal” program and it would undercut its collaborative strategy and ~~problem-solving~~ *problem-solving* orientation if assistance were required to be positioned in a legal context. Furthermore, it is critical that consumers using the program are free from any retribution.

(e) The Health Consumer Alliance—(HCA), a partnership of independent, nonprofit legal services agencies, includes seven local health consumer assistance programs in the Counties of Alameda, Fresno, Los Angeles, Orange, San Diego, San Francisco, and San Mateo. These seven Health Consumer Centers help low-income consumers receive necessary health care through education, training, and advocacy, and analysis of systemic health access issues.

(f) The Health Insurance Counseling and Advocacy Program (HICAP) provides Medicare beneficiaries and those imminent of becoming eligible for Medicare with counseling and advocacy services on a statewide basis. HICAP offers information and assistance regarding Medicare, managed health care, health and long-term care related life and disability insurance, and related health care coverage plans.

SEC. 187. Section 1255 of the Health and Safety Code is amended to read:

1255. In addition to the basic services offered under the license, a general acute care hospital may be approved in accordance with subdivision (c) of Section 1277 to offer special services, including, but not limited to, the following:

- (a) Radiation therapy department.
- (b) Burn center.
- (c) Emergency center.
- (d) Hemodialysis center (or unit).
- (e) Psychiatric.
- (f) Intensive care newborn nursery.
- (g) Cardiac surgery.
- (h) Cardiac catheterization laboratory.
- (i) Renal transplant.
- (j) Other special services as the department may prescribe by regulation.

A general acute care hospital that exclusively provides acute medical rehabilitation center services may be approved in



1 accordance with subdivision (b) of Section 1277 to offer special  
2 services not requiring surgical facilities.

3 The state department shall adopt standards for special services  
4 and other regulations as may be necessary to implement this  
5 section. For cardiac catheterization laboratory service, the state  
6 department shall, at a minimum, adopt standards and regulations  
7 that specify that only diagnostic services, and what diagnostic  
8 services, may be offered by an acute care hospital or a  
9 multispecialty clinic as defined in subdivision (l) of Section 1206  
10 that is approved to provide cardiac catheterization laboratory  
11 service but is not also approved to provide cardiac surgery service,  
12 together with the conditions under which the cardiac  
13 catheterization laboratory service may be offered.

14 A cardiac catheterization laboratory service shall be located in  
15 a general acute care hospital that is either licensed to perform  
16 cardiovascular procedures requiring extracorporeal coronary  
17 artery bypass; that meets all of the applicable licensing  
18 requirements relating to staff, equipment, and space for service;,  
19 or shall, at a minimum, have a licensed intensive care service; *and*  
20 coronary care service and maintain a written agreement for the  
21 transfer of patients to a general acute care hospital that is licensed  
22 for cardiac surgery or shall be located in a multispecialty clinic as  
23 defined in subdivision (l) of Section 1206. The transfer agreement  
24 shall include protocols that will minimize the need for duplicative  
25 cardiac catheterizations at the hospital in which the cardiac surgery  
26 is to be performed.

27 For purposes of this section, ~~multispecialty—clinic,~~  
28 “*multispecialty clinic*,” as defined in subdivision (l) of Section  
29 1206, includes an entity in which the multispecialty clinic holds at  
30 least a 50-percent general partner interest and maintains  
31 responsibility for the management of the service, if all of the  
32 following requirements are met:

33 (1) The multispecialty clinic existed as of March 1, 1983.

34 (2) Prior to March 1, 1985, the multispecialty clinic did not  
35 offer cardiac ~~catheterization~~ *catheterization* services, dynamic  
36 multiplane imaging, or other types of coronary or similar  
37 angiography.

38 (3) The multispecialty clinic creates only one entity that  
39 operates its service at one site.

(4) These entities shall have the equipment and procedures necessary for the stabilization of patients in emergency situations prior to transfer and patient transfer arrangements in emergency situations that shall be in accordance with the standards established by the Emergency Medical Services Authority, including the availability of comprehensive care and the qualifications of any general acute care hospital expected to provide emergency treatment.

Except as provided in Sections 128525 and 128530, under no circumstances shall cardiac catheterizations be performed outside of a general acute care hospital or a multispecialty clinic, as defined in subdivision (l) of Section 1206, that qualifies for this definition as of March 1, 1983.

SEC. 188. Section 1367.04 of the Health and Safety Code is amended to read:

1367.04. (a) Not later than January 1, 2006, the department shall develop and adopt regulations establishing standards and requirements to provide health care service plan enrollees with appropriate access to language assistance in obtaining health care services.

(b) In developing the regulations, the department shall require every health care service plan and specialized health care service plan to assess the linguistic needs of the enrollee population, excluding Medi-Cal enrollees, and to provide for translation and interpretation for medical services, as indicated. A health care service plan that participates in the Healthy Families Program may assess the Healthy Families Program enrollee population separately from the remainder of its enrollee population for purposes of subparagraph (A) of paragraph (1). A health care service plan that chooses to separate its Healthy Families Program enrollment from the remainder of its enrollee population shall treat the Healthy Families Program population separately for purposes of determining whether subparagraph (A) of paragraph (1) is applicable, and shall also treat the Healthy Families Program population separately for purposes of applying the percentage and numerical thresholds in subparagraph (A) of paragraph (1). The regulations shall include the following:

(1) Requirements for the translation of vital documents that include the following:

(A) A requirement that all vital documents, as defined pursuant to subparagraph (B), be translated into an indicated language, as follows:

(i) A health care service plan with an enrollment of 1,000,000 or more shall translate vital documents into the top two languages other than English as determined by the needs assessment as required by this subdivision and any additional languages when 0.75 percent or 15,000 of the enrollee population, whichever number is less, excluding Medi-Cal enrollment and treating Healthy Families Program enrollment separately indicates in the needs assessment as required by this subdivision a preference for written materials in that language.

(ii) A health care service plan with an enrollment of 300,000 or more but less than 1,000,000 shall translate vital documents into the top one language other than English as determined by the needs assessment as required by this subdivision and any additional languages when 1 percent or 6,000 of the enrollee population, whichever number is less, excluding Medi-Cal enrollment and treating Healthy Families Program enrollment separately indicates in the needs assessment as required by this subdivision a preference for written materials in that language.

(iii) A health care service plan with an enrollment of less than 300,000 shall translate vital documents into a language other than English when 3,000 or more or ~~five~~ 5 percent of the enrollee population, whichever number is less, excluding Medi-Cal enrollment and treating Healthy Families Program enrollment separately indicates in the needs assessment as required by this subdivision a preference for written materials in that language.

(B) Specification of vital documents produced by the plan that are required to be translated. The specification of vital documents shall not exceed that of the Department of Health and Human Services (~~FHS~~) (HHS) Office of Civil Rights (OCR) Policy Guidance (65 Federal Register 52762 (August 30, 2000)), but shall include all of the following:

(i) Applications.

(ii) Consent forms.

(iii) Letters containing important information regarding eligibility and participation criteria.

1 (iv) Notices pertaining to the denial, reduction, modification,  
2 or termination of services and benefits, and the right to file a  
3 grievance or appeal.

4 (v) Notices advising limited-English-proficient persons of the  
5 availability of free language assistance and other outreach  
6 materials that are provided to enrollees.

7 (vi) Translated documents shall not include a health care  
8 service plan's explanation of benefits or similar claim processing  
9 information that is sent to enrollees, unless the document requires  
10 a response by the enrollee.

11 (C) (i) For those documents described in subparagraph (B)  
12 that are not standardized but contain enrollee specific information,  
13 health care service plans shall not be required to translate the  
14 documents into the threshold languages identified by the needs  
15 assessment as required by this subdivision, but rather shall include  
16 with the documents a written notice of the availability of  
17 interpretation services in the threshold languages identified by the  
18 needs assessment as required by this subdivision.

19 (ii) Upon request, the enrollee shall receive a written  
20 translation of the documents described in clause (i). The health  
21 care service plan shall have up to, but not to exceed, 21 days to  
22 comply with the enrollee's request for a written translation. If an  
23 enrollee requests a translated document, all timeframes and  
24 deadline requirements related to the document that apply to the  
25 health care service plan and enrollees under the provisions of this  
26 chapter and under any regulations adopted pursuant to this chapter  
27 shall begin to run upon the health care service plan's issuance of  
28 the translated document.

29 (iii) For grievances that require expedited plan review and  
30 response in accordance with subdivision (b) of Section 1368.01,  
31 the health care service plan may satisfy this requirement by  
32 providing notice of the availability and access to oral  
33 interpretation services.

34 (D) A requirement that health care service plans advise  
35 limited-English-proficient enrollees of the availability of  
36 interpreter services.

37 (2) Standards to ensure the quality and accuracy of the written  
38 translations and that a translated document meets the same  
39 standards required for the English language version of the  
40 document. The English language documents shall determine the

rights and obligations of the parties, and the translated documents shall be admissible in evidence only if there is a dispute regarding a substantial difference in the material terms and conditions of the English language document and the translated document.

(3) Requirements for surveying the language preferences and needs assessments of health care service plan enrollees within one year of the effective date of the regulations that permit health care service plans to utilize various survey methods, including, but not limited to, the use of existing enrollment and renewal processes, subscriber newsletters, or other mailings. Health care service plans shall update the needs assessment, demographic profile, and language translation requirements every three years.

~~(3)~~  
(4) Requirements for individual enrollee access to interpretation services.

~~(4)~~  
(5) Standards to ensure the quality and timeliness of oral interpretation services provided by health care service plans.

(c) In developing the regulations, standards, and requirements, the department shall consider the following:

(1) Publications and standards issued by federal agencies, such as the Culturally and Linguistically Appropriate Services (CLAS) in Health Care issued by the United States Department of Health and Human Services Office of Minority Health in December 2000, and the Department of Health and Human Services ~~(FHS)~~ (HHS) Office of Civil Rights (OCR) Policy Guidance (65 Federal Register 52762 (August 30, 2000)).

(2) Other cultural and linguistic requirements under state programs, such as Medi-Cal Managed Care Policy Letters, cultural and linguistic requirements imposed by the State Department of Health Services on health care service plans that contract to provide Medi-Cal managed care services, and cultural and linguistic requirements imposed by the Managed Risk Medical Insurance Board on health care service plans that contract to provide services in the Healthy Families Program.

(3) Standards adopted by other states pertaining to language assistance requirements for health care service plans.

(4) Standards established by California or nationally recognized accrediting, certifying, or licensing organizations and

1 medical and health care interpreter professional associations  
2 regarding interpretation services.

3 (5) Publications, guidelines, reports, and recommendations  
4 issued by state agencies or advisory committees, such as the report  
5 card to the public on the comparative performance of plans and  
6 reports on cultural and linguistic services issued by the Office of  
7 Patient Advocate and the report to the Legislature from the Task  
8 Force on Culturally and Linguistically Competent Physicians and  
9 Dentists established by Section 852 of the Business and  
10 Professions Code.

11 (6) Examples of best practices relating to language assistance  
12 services by health care providers and health care service plans,  
13 including existing practices.

14 (7) Information gathered from complaints to the HMO  
15 Helpline and consumer assistance centers regarding language  
16 assistance services.

17 (8) The cost of compliance and the availability of translation  
18 and interpretation services and professionals.

19 (9) Flexibility to accommodate variations in plan networks and  
20 method of service delivery. The department shall allow for health  
21 care service plan flexibility in determining compliance with the  
22 standards for oral and written interpretation services.

23 (d) The department shall work to ensure that the biennial  
24 reports required by this section, and the data collected for those  
25 reports, are consistent with reports required by  
26 government-sponsored programs and do not require duplicative or  
27 conflicting data collection or reporting.

28 (e) The department shall seek public input from a wide range  
29 of interested parties through the Advisory Committee on Managed  
30 Health Care or other advisory bodies established by the director.

31 (f) A contract between a health care service plan and a health  
32 care provider shall require compliance with the standards  
33 developed under this section. In furtherance of this section, the  
34 contract shall require providers to cooperate with the plan by  
35 providing any information necessary to assess compliance.

36 (g) The department shall report biennially to the Legislature  
37 and the Advisory Committee on Managed Health Care, or other  
38 advisory bodies established by the director, regarding plan  
39 compliance with the standards, including results of compliance  
40 audits made in conjunction with other audits and reviews. The

1 reported information shall also be included in the publication  
2 required under subparagraph (B) of paragraph (3) of subdivision  
3 (c) of Section 1368.02. The department shall also utilize the  
4 reported information to make recommendations for changes that  
5 further enhance standards pursuant to this section. The department  
6 may also delay or otherwise phase in implementation of standards  
7 and requirements in recognition of costs and availability of  
8 translation and interpretation services and professionals.

9 (h) (1) Except for contracts with the State Department of  
10 Health Services Medi-Cal program, the standards developed  
11 under this section shall be considered the minimum required for  
12 compliance.

13 (2) The regulations shall provide that a health plan is in  
14 compliance if the plan is required to meet the same or similar  
15 standards by the Medi-Cal program, either by contract or state law,  
16 if the standards provide as much access to cultural and linguistic  
17 services as the standards established by this section for an equal or  
18 higher number of enrollees and therefore meet or exceed the  
19 standards of the regulations established pursuant to this section,  
20 and the department determines that the health care service plan is  
21 in compliance with the standards required by the Medi-Cal  
22 program. To meet this requirement, the department shall not be  
23 required to perform individual audits. The department shall, to the  
24 extent feasible, rely on audits, reports, or other oversight and  
25 enforcement methods used by the State Department of Health  
26 Services.

27 (3) The determination pursuant to paragraph (2) shall only  
28 apply to the enrollees covered by the Medi-Cal program standards.  
29 A health care service plan subject to paragraph (2) shall comply  
30 with the standards established by this section with regard to  
31 enrollees not covered by the Medi-Cal program.

32 ~~(j)~~

33 (i) Nothing in this section shall prohibit a government  
34 purchaser from including in their contracts additional translation  
35 or interpretation requirements, to meet linguistic or cultural needs,  
36 beyond those set forth pursuant to this section.

37 SEC. 189. Section 1375.7 of the Health and Safety Code is  
38 amended to read:

39 1375.7. (a) This section shall be known and may be cited as  
40 the Health Care Providers' Bill of Rights.





1 (b) No contract issued, amended, or renewed on or after  
2 January 1, 2003, between a plan and a health care provider for the  
3 provision of health care services to a plan enrollee or subscriber  
4 shall contain any of the following terms:

5 (1) (A) Authority for the plan to change a material term of the  
6 contract, unless the change has first been negotiated and agreed to  
7 by the provider and the plan or the change is necessary to comply  
8 with state or federal law or regulations or any accreditation  
9 requirements of a private sector accreditation organization. If a  
10 change is made by amending a manual, policy, or procedure  
11 document referenced in the contract, the plan shall provide 45  
12 business days' notice to the provider, and the provider has the right  
13 to negotiate and agree to the change. If the plan and the provider  
14 cannot agree to the change to a manual, policy, or procedure  
15 document, the provider has the right to terminate the contract prior  
16 to the implementation of the change. In any event, the plan shall  
17 provide at least 45 business days' notice of its intent to change a  
18 material term, unless a change in state or federal law or regulations  
19 or any accreditation requirements of a private sector accreditation  
20 organization require a shorter timeframe for compliance.  
21 However, if the parties mutually agree, the 45 business day notice  
22 requirement may be waived. Nothing in this subparagraph limits  
23 the ability of the parties to mutually agree to the proposed change  
24 at any time after the provider has received notice of the proposed  
25 change.

26 (B) If a contract between a provider and a plan provides  
27 benefits to enrollees or subscribers through a preferred provider  
28 arrangement, the contract may contain provisions permitting a  
29 material change to the contract by the plan if the plan provides at  
30 least 45 business days' notice to the provider of the change and the  
31 provider has the right to terminate the contract prior to the  
32 implementation of the change.

33 (2) A provision that requires a health care provider to accept  
34 additional patients beyond the contracted number or in the absence  
35 of a number if, in the reasonable professional judgment of the  
36 provider, accepting additional patients would endanger patients'  
37 access to, or continuity of, care.

38 (3) A requirement to comply with quality improvement or  
39 utilization management programs or procedures of a plan, unless  
40 the requirement is fully disclosed to the health care provider at

1 least 15 business days prior to the provider executing the contract.  
2 However, the plan may make a change to the quality improvement  
3 or utilization management programs or procedures at any time if  
4 the change is necessary to comply with state or federal law or  
5 regulations or any accreditation requirements of a private sector  
6 accreditation organization. A change to the quality improvement  
7 or utilization management programs or procedures shall be made  
8 pursuant to paragraph (1).

9 (4) A provision that waives or conflicts with any provision of  
10 this chapter. A provision in the contract that allows the plan to  
11 provide professional liability or other coverage or to assume the  
12 cost of defending the provider in an action relating to professional  
13 liability or other action is not in conflict with, or in violation of,  
14 this chapter.

15 (5) A requirement to permit access to patient information in  
16 violation of federal or state laws concerning the confidentiality of  
17 patient information.

18 (c) (1) When a contracting agent sells, leases, or transfers a  
19 health-provider's contract to a payor, the rights and  
20 obligations of the provider shall be governed by the underlying  
21 contract between the health care provider and the contracting  
22 agent.

23 (2) For purposes of this subdivision, the following terms shall  
24 have the following meanings:

25 (A) "Contracting agent" has the meaning set forth in  
26 paragraph (2) of subdivision (d) of Section 1395.6.

27 (B) "Payor" has the meaning set forth in paragraph (3) of  
28 subdivision (d) of Section 1395.6.

29 (d) Any contract provision that violates subdivision (b) or (c)  
30 shall be void, unlawful, and unenforceable.

31 (e) The department shall compile the information submitted by  
32 plans pursuant to subdivision (h) of Section 1367 into a report and  
33 submit the report to the Governor and the Legislature by March 15  
34 of each calendar year.

35 (f) Nothing in this section shall be construed or applied as  
36 setting the rate of payment to be included in contracts between  
37 plans and health care providers.

38 (g) For purposes of this section the following definitions apply:

39 (1) "Health care provider" means any professional person,  
40 medical group, independent practice association, organization,

1 health facility, or other person or institution licensed or authorized  
2 by the state to deliver or furnish health services.

3 (2) “Material” means a provision in a contract to which a  
4 reasonable person would attach importance in determining the  
5 action to be taken upon the provision.

6 SEC. 190. Section 1569.30 of the Health and Safety Code is  
7 amended to read:

8 1569.30. (a) The department shall adopt, amend, or repeal, in  
9 accordance with Chapter ~~4.5~~ 3.5 (commencing with Section  
10 ~~11371~~ 11340) of Part 1 of Division 3 of Title 2 of the Government  
11 Code, ~~such~~ reasonable rules, regulations, and standards as may be  
12 necessary or proper to carry out the purposes and intent of this  
13 chapter and to enable the department to exercise the powers and  
14 perform the duties conferred upon it by this chapter, not  
15 inconsistent with any statute of this state.

16 (b) The regulations governing residential facilities for the  
17 elderly under the Community Care Facilities Act ~~provided for in~~  
18 ~~Chapter~~ (*Chapter* 3 (commencing with Section ~~1500~~ 1500)) shall  
19 continue to govern residential care facilities for the elderly under  
20 this act until amended or repealed.

21 SEC. 191. Section 1569.70 of the Health and Safety Code is  
22 amended to read:

23 1569.70. It is the intent of the Legislature to develop and  
24 implement a plan to establish three levels of care under the  
25 residential care facility for the elderly license, subject to future  
26 Budget Act appropriations and statutory authorization to  
27 implement levels of care.

28 (a) The guidelines for the development of these levels of care  
29 are:

30 (1) Level I—Base care and supervision. Residents at this level  
31 are able to maintain a higher degree of independence and need only  
32 minimum care and supervision, as defined, and minimal personal  
33 care assistance.

34 (2) Level II—Nonmedical personal care. Residents at this  
35 level have functional limitations and psychosocial needs requiring  
36 not only care and supervision but frequent assistance with personal  
37 activities of daily living and active intervention to help ~~then~~ them  
38 maintain their potential for independent living.

39 (3) Level III—Health related assistance. Residents at this  
40 level require the services of lower levels and rely on the facility for

1 extensive assistance with personal activities of daily living. This  
2 level may include residents who also require the occasional  
3 services of an appropriate skilled professional due to chronic  
4 health problems and returning residents recovering from illness,  
5 injury, or treatment ~~which~~ *that* required placement in facilities  
6 providing higher levels of care.

7 These levels are to be based on the services required by residents  
8 at each level due to their functional limitations.

9 (b) The levels of care plan shall include:

10 (1) Guidelines for meeting requirements at each level of care  
11 by utilizing appropriate community and professional services.  
12 Options shall be provided to allow facilities to meet resident needs  
13 by accessing community services or hiring appropriate staff.

14 (2) Assessment procedures for facility evaluation of residents'  
15 level of care needs.

16 (3) Process for ensuring the individual facility's ability to serve  
17 clients at each level of care they intend to provide.

18 (4) Recommendations for a supplemental rate structure based  
19 on the services required at Levels II and III to be provided for  
20 residents who need those levels of care and are recipients of  
21 SSI/SSP. These rates shall be in addition to the basic SSI/SSP rate  
22 for providing care supervision and shall reflect actual costs of  
23 operation for residential care facilities for the elderly.

24 (5) Procedures for assessment and certification of SSI/SSP  
25 recipients, by county social services departments to allow for  
26 administration of the supplemental rate structure.

27 (6) Procedures for evaluating and monitoring the  
28 appropriateness of the levels of care determined for SSI/SSP  
29 recipients.

30 (c) Implementation of the levels of care system shall consider  
31 the applicability of the 1985 level of care report developed by the  
32 ~~Health and Welfare Agency~~ *California Health and Human*  
33 *Services Agency*, so as to ensure continuity in the residential care  
34 facility for the elderly program as outlined under this chapter.

35 SEC. 192. Section 1596.816 of the Health and Safety Code is  
36 amended to read:

37 1596.816. (a) The Community Care Licensing Division of  
38 the department shall regulate child care licensees through an  
39 organizational unit that is separate from that used to regulate all  
40 other licensing programs. The chief of the child care licensing

1 branch shall report directly to the Deputy Director of the  
2 Community Care Licensing Division.

3 (b) All child care regulatory functions of the licensing division,  
4 including the adoption and interpretation of regulations, staff  
5 training, monitoring and enforcement functions, administrative  
6 support functions, and child care advocacy responsibilities shall be  
7 carried out by the child care licensing branch to the extent that  
8 separation of these activities can be accomplished without new  
9 costs to the department.

10 (c) The Child Care Ombudsman Program shall be transferred  
11 to the Child Care Advocate Branch when Section 10 of this act  
12 becomes operative or upon implementation of an action that  
13 supports expansion of the program.

14 (d) Those persons conducting inspections of a day care  
15 facilities shall meet qualifications approved by the State Personnel  
16 Board.

17 (e) The department shall review a sampling of child care  
18 facility inspection reports and submit findings to the Legislature  
19 by January 15 of each year. Insofar as data is available, this report  
20 shall summarize the types and frequencies of violations,  
21 correlating that data with health and safety complaints and  
22 accidents, and recommending further protective legislative  
23 measures where warranted.

24 (f) The department shall notify the appropriate legislative  
25 committees whenever actual staffing levels of licensing program  
26 analysts within the child care licensing branch drops more than 10  
27 percent below authorized positions.

28 (g) The budget for the child care licensing branch shall be  
29 included as a separate entry within the budget of the department.

30 SEC. 193. Section 1794.04 of the Health and Safety Code is  
31 amended to read:

32 1794.04. Except as otherwise provided in subdivision (b) of  
33 ~~Section 1794.03~~ 1794.03, no person, political subdivision of the  
34 state, or governmental agency shall provide home dialysis services  
35 unless a license has been issued under this chapter. Any person,  
36 political subdivision of the state, or governmental agency desiring  
37 a license for a home dialysis agency under this chapter shall file  
38 with the ~~state~~ department a verified application on a form  
39 prescribed and furnished by the ~~state~~ department ~~which~~ that  
40 contains any information as may be required by the ~~state~~

1 department for the proper administration and enforcement of this  
2 chapter.

3 SEC. 194. Section 11758 of the Health and Safety Code is  
4 amended to read:

5 11758. The definitions contained in this ~~article~~ *chapter* shall  
6 govern the construction of this chapter, unless the context requires  
7 otherwise.

8 SEC. 195. Section 13108.5 of the Health and Safety Code is  
9 amended to read:

10 13108.5. (a) The State Fire Marshal, in consultation with the  
11 Director of Forestry and Fire Protection and the Director of  
12 Housing and Community Development, shall, pursuant to Section  
13 18930, propose fire protection building standards for roofs,  
14 exterior walls, structure projections, including, but not limited to,  
15 porches, decks, balconies, and eaves, and structure openings,  
16 including, but not limited to, attic and eave vents and windows of  
17 buildings in fire hazard severity zones, including very high fire  
18 hazard severity zones designated by the Director of Forestry and  
19 Fire Protection pursuant to Article 9 (commencing with Section  
20 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources  
21 Code.

22 (b) Building standards adopted pursuant to this section shall  
23 also apply to buildings located in very high fire hazard severity  
24 zones designated pursuant to Chapter 6.8 (commencing with  
25 Section 51175) of Part 1 of Division 1 of Title 5 of the Government  
26 Code, and other areas designated by a local agency following a  
27 finding supported by substantial evidence in the record that the  
28 requirements of the building standards adopted pursuant to this  
29 section are necessary for effective fire protection within the area.

30 (c) Building standards adopted pursuant to this section shall  
31 also apply to buildings located in urban wildland interface  
32 communities. A local agency may, at its discretion, include in or  
33 exclude from the requirements of these building standards any area  
34 in its jurisdiction following a finding supported by substantial  
35 evidence in the record at a public hearing that the requirements of  
36 these building standards are necessary or not necessary,  
37 respectively, for effective fire protection within the area. Changes  
38 made by a local agency to an urban wildland interface community  
39 area following a finding supported by substantial evidence in the  
40 record shall be final and shall not be rebuttable.



(d) For purposes of subdivision (c), “urban wildland interface community” means a community listed in “Communities at Risk from Wild Fires,” produced by the California Department of Forestry and Fire Protection, Fire ~~And~~ and Resource Assessment Program, pursuant to the National Fire Plan, federal Fiscal Year 2001 Department of the Interior and Related Agencies Appropriations Act (Public Law 106-291).

SEC. 196. Section 17037.5 of the Health and Safety Code is amended to read:

17037.5. (a) Any person who ceases to operate or maintain a employee housing ~~which~~ *that* is subject to the permit requirement pursuant to this part shall be required to annually complete and submit a Certificate of Non-Operation to the enforcement agency. The Certificate of Non-Operation shall be submitted for two years following the discontinuation of the use of any area on the property as employee housing. The Certificate of Non-Operation shall attest under penalty of perjury that the employee housing has been destroyed, or is no longer owned or operated, or has not been and shall not be occupied by five or more employees during the calendar year.

(b) The Certificate of Non-Operation shall include the owner’s name and address, the operator’s name and address, the employee housing name and location, the maximum number of employees who have occupied or shall occupy the employee housing during the calendar year, and any other information considered relevant by the enforcement agency. The Certificate of Non-Operation shall be completed and submitted to the enforcement agency no later than 30 calendar days after the enforcement agency provides the form to the owner or operator.

SEC. 197. Section 17921.9 of the Health and Safety Code is amended to read:

17921.9. (a) The Legislature finds and declares all of the following:

(1) The deterioration of copper piping has become a serious problem in various communities in the state.

(2) Chlorinated polyvinyl chloride (CPVC) plastic piping has been successfully used for many years in other states and in nations around the globe, and has also been widely used, in accordance with federal regulations, in mobilehome construction.



(3) The Department of Community Development of the City of Colton, acting pursuant to a good-faith belief that it was in compliance with state regulations, approved the use of CPVC piping as an alternative to copper piping in early 1993 when the department was confronted with widespread deterioration of copper piping systems in a tract in the western part of that city.

(4) The retrofitting of homes in Colton with CPVC piping has been successful.

(b) It is, therefore, the intent of the Legislature in enacting this section to allow the use of CPVC piping in building construction in California as an alternate material under specified conditions.

(c) Notwithstanding any other provision of law, the provisions of the California Plumbing Code that do not authorize the use of CPVC piping within California shall not apply to any local government that permitted the use of CPVC piping for potable water systems within its jurisdiction prior to January 1, 1996. Any local government that permitted the use of CPVC piping for potable water systems within its jurisdiction prior to January 1, 1996, shall require both of the following:

(1) That the CPVC piping to be used is listed as an approved material in, and is installed in accordance with, the 1994 edition of the Uniform Plumbing Code.

(2) That all installations of CPVC strictly comply with the interim flushing procedures and worker safety measures set forth in subdivisions (d) and (e).

(d) The following safe work practices shall be adhered to when installing both CPVC and copper plumbing pipe in California after the effective date of the act that adds this section:

(1) (A) Employers shall provide education and training to inform plumbers of risks, provide equipment and techniques to help reduce exposures from plumbing pipe installation, foster safe work habits, and post signs to warn against the drinking of preoccupancy water.

(B) For purposes of this paragraph, “training” shall include training in ladder safety, safe use of chain saws and wood-boring tools, hazards associated with other construction trades, hazards from molten solder and flux, and the potential hazards and safe use of soldering tools and materials.

1 (2) Cleaners shall be renamed as primers, include strong  
2 warnings on the hazards of using primers as cleaners, and include  
3 dyes to discourage use as cleaners.

4 (3) Applicators and daubers shall be limited to small sizes.

5 (4) Enclosed spaces shall be ventilated with portable fans when  
6 installing CPVC pipe.

7 (5) Protective impermeable gloves shall be utilized when  
8 installing CPVC pipe.

9 (6) Employers shall provide onsite portable eyewash stations  
10 for all employees to allow for immediate flushing of eyes in the  
11 event of splashing of hot flux.

12 (7) Employers using acetylene torches shall ensure that the  
13 acetylene tanks are regularly maintained and inspected in  
14 accordance with applicable regulatory requirements. Fire  
15 extinguishers shall be kept in close proximity to the workplace.

16 (e) All of the following flushing procedures shall be adhered to  
17 when installing CPVC pipe in California after the effective date of  
18 the act that adds this section:

19 (1) When plumbing is completed and ready for pressure  
20 testing, each cold water and hot water tap shall be flushed starting  
21 with the fixture (basin, sink, tub, or shower) closest to the water  
22 meter and continuing with each successive fixture, moving toward  
23 the end of the system. Flushing shall be continued for at least one  
24 minute or longer until water appears clear at each fixture. This step  
25 may be omitted if a jurisdiction requires the building inspector to  
26 test each water system.

27 (2) The system shall be kept filled with water for at least one  
28 week and then flushed in accordance with the procedures set forth  
29 ~~is~~ in paragraph (1). The system shall be kept filled with water and  
30 not drained.

31 (3) Before the premises are occupied, the hot water heater shall  
32 be turned on and the system shall be flushed once more.  
33 Commencing with the fixture closest to the hot water heater, the  
34 hot water tap shall be permitted to run until hot water is obtained.  
35 The time required to get hot water in a specific tap shall be  
36 determined and then the cold water tap at the same location shall  
37 be turned on for the same period of time. This procedure shall be  
38 repeated for each fixture in succession toward the end of the  
39 system.

1 (f) Nothing in this section shall be construed to affect the  
2 applicability of any existing law imposing liability on a  
3 manufacturer, distributor, retailer, installer, or any other person or  
4 entity under the laws of this state for liability.

5 (g) This section shall not be operative after January 1, 1998.

6 SEC. 198. Section 17991 of the Health and Safety Code is  
7 amended to read:

8 17991. (a) The sale or other transfer of property to a third  
9 party shall not render moot an administrative or judicial action or  
10 proceeding pursuant to this article, including an action under  
11 Section 17982, instituted by an enforcement agency, or a receiver  
12 on behalf of an enforcement agency, against the owner of record  
13 on the date a citation for, or other notice of, a violation of this part  
14 was issued.

15 (b) In the event of any sale or other transfer of property to a  
16 third party during the period between the issuance of the notice of  
17 violation and the abatement of the violation, or any administrative  
18 or judicial actions related thereto, within five days after the sale or  
19 transfer occurs, the transferor shall record a Notice of Conveyance  
20 of Substandard Property with the county recorder where the  
21 property is located, identifying the name and address of the buyer  
22 ~~of~~ or transferee and executed with a signature that the information  
23 is true and correct, under penalty of perjury.

24 (c) In the event of any sale or other transfer of property to a third  
25 party during the period between the issuance of the notice of  
26 violation and the abatement of the violation, or any administrative  
27 or judicial actions related thereto, the transferor shall provide all  
28 of the following information to the enforcement agency ~~with~~  
29 *within* five days after the sale or transfer occurs:

30 (1) If the seller or transferor is not an individual person, the  
31 name, address, and driver's license number or identification card  
32 number of each individual who has an interest in excess of 5  
33 percent in the entity which is selling or transferring the property.

34 (2) If the buyer or transferee is an individual person, the name,  
35 address, and driver's license number or identification number of  
36 that individual.

37 (3) If the buyer or transferee is not an individual person, the  
38 name, address, and driver's license number or identification card  
39 number of each individual who has an interest in excess of 5  
40 percent in the entity that is the buyer or transferee of the property.

1 SEC. 199. Section 25117.4.1 of the Health and Safety Code  
2 is amended to read:

3 25117.4.1. ~~Local~~ (a) “*Local* health officer” means county  
4 health officers, city health officers, and district health officers, as  
5 defined in this code.

6 (b) “*Local officer*” means a local public officer authorized to  
7 implement this chapter pursuant to subdivision (a) of Section  
8 25180.

9 SEC. 200. Section 25121.3 of the Health and Safety Code is  
10 amended to read:

11 25121.3. (a) “*Remote site*” means a site operated by the  
12 generator where hazardous waste is initially collected, at which  
13 generator staff, other than security staff, is not routinely located,  
14 and ~~which~~ *that* is not contiguous to a staffed site operated by the  
15 generator of the hazardous waste or ~~which~~ *that* does not have  
16 access to a staffed site without the use of public roads. Generator  
17 staff who visit a remote location to perform inspection,  
18 monitoring, or maintenance activities on a periodic scheduled or  
19 random basis, less frequently than daily, are not considered to be  
20 routinely located at the remote location.

21 (b) Notwithstanding this chapter or the regulations adopted by  
22 the department pursuant to this chapter, a generator who complies  
23 with the notification requirements of subdivision (d) of Section  
24 25110.10 may hold hazardous waste at the remote site where the  
25 hazardous waste is initially collected, or at another remote site  
26 operated by the generator, while en route to the consolidation site,  
27 if all of the following requirements are met with respect to the  
28 hazardous waste:

29 (1) The hazardous waste is a non-RCRA hazardous waste, or  
30 the hazardous waste or its management at the remote site is  
31 otherwise exempt from, or is not otherwise regulated pursuant to,  
32 the federal act.

33 (2) The requirements of subdivision (b) of Section 25110.10  
34 are met.

35 (3) All personnel handling hazardous waste at any remote site  
36 complete health and safety training equivalent to the training  
37 required under Section 5194 of Title 8 of the California Code of  
38 Regulations, prior to being assigned to handle hazardous waste.

39 (4) A description of the actions ~~which~~ *that* the generator’s  
40 personnel will take to minimize hazards to human health and

1 safety or to the environment from fires, explosions, or any  
2 unplanned release of hazardous waste or hazardous waste  
3 constituents to air, soil, or surface water at the remote site where  
4 the hazardous waste is being managed shall be included in the  
5 contingency plan for the consolidation site. A single generic  
6 description of response actions may ~~by~~ *be* used for all similar  
7 remote sites associated with a single consolidation site.

8 (5) As soon as the generator begins to actively manage the  
9 hazardous waste at the remote site, the generator places the  
10 hazardous waste in a container meeting the requirements of the  
11 United States Department of Transportation applicable to  
12 containers used to transport hazardous waste, and the containers  
13 are managed in accordance with the regulations adopted by the  
14 department regarding the management by generators of containers  
15 used to hold hazardous waste.

16 (6) The containers used to hold the hazardous waste at the  
17 remote site are labeled, in accordance with the regulations adopted  
18 by the department pertaining to labeling requirements for  
19 generators, as soon as the hazardous waste is placed in the  
20 container.

21 (7) The generator makes a reasonable effort to minimize the  
22 possibility of unknowing or unauthorized entry into the area where  
23 the hazardous waste is held at the remote site. If the remote site is  
24 located within one mile of a residential or commercial area, or is  
25 otherwise readily accessible to the public, the area where  
26 hazardous waste is held at the remote site shall at all times be  
27 supervised by employees or agents of the generator or otherwise  
28 secured so as to prevent unknowing entry and to minimize the  
29 possibility for unauthorized entry.

30 (c) If the management of hazardous wastes at a remote site does  
31 not meet all of the conditions specified in subdivision (b), the  
32 hazardous waste shall be subject to all other applicable generator  
33 and facility requirements of this chapter and the regulations  
34 adopted by the department to implement this chapter.

35 SEC. 201. Section 25160.6 of the Health and Safety Code is  
36 amended to read:

37 25160.6. (a) (1) If a hazardous waste shipment is rejected in  
38 its entirety before the original manifest is signed by an offsite  
39 hazardous waste facility operator, the original manifest shall be



1 used to transport the rejected load to either the generator or an  
2 alternate facility designated by the generator.

3 (2) An offsite hazardous waste facility operator is not required  
4 to sign a manifest pursuant to this subdivision until the hazardous  
5 waste listed on the manifest is fully unloaded at the facility. If the  
6 transporter leaves a loaded or partially loaded trailer at the facility,  
7 the facility operator shall sign the manifest before the transporter  
8 departs the facility.

9 (3) The hazardous waste facility operator shall, when preparing  
10 a manifest to accompany a rejected load of hazardous waste, enter  
11 the number of the original manifest in Box 19 on the new manifest,  
12 and the facility operator shall enter the number of the new manifest  
13 in Box 19 on those copies of the original manifest still in the  
14 facility operator's possession. The facility operator shall enter this  
15 information elsewhere on the manifest if required by regulations  
16 adopted by the department. The facility operator shall also use Box  
17 19 on the new manifest, or any other box that is required by the  
18 department's regulations, to identify the shipment as a rejected  
19 load.

20 (4) After an offsite hazardous waste facility operator rejects a  
21 shipment of hazardous waste, the transporter shall transport the  
22 hazardous waste, accompanied by the original manifest or a new  
23 manifest, to either the generator or an alternate facility designated  
24 by the generator. The transporter shall obtain a signature on the  
25 manifest from the operator of the alternate designated facility or  
26 the generator, whichever receives the rejected shipment.

27 (b) For purposes of receiving hazardous waste rejected by an  
28 offsite hazardous waste facility operator, the generator of the  
29 hazardous waste shall be considered a designated facility for the  
30 receipt of hazardous waste generated by that generator. For  
31 purposes of this section, "designated facility" has the same  
32 meaning as that term is defined in Section 66260.10 of Title 22 of  
33 the California Code of Regulations, including any amendments  
34 thereto.

35 (c) (1) An offsite hazardous waste facility operator that rejects  
36 an entire shipment or a partial shipment of hazardous waste  
37 pursuant to this section is not the generator of that hazardous waste  
38 for purposes of this chapter, including any regulations adopted  
39 pursuant to this chapter, nor an arranger for disposal of the waste,  
40 nor a transporter who chooses the location for disposal of waste.



(2) (A) An offsite hazardous waste facility operator that rejects an entire shipment or a partial shipment of hazardous waste pursuant to this section is the offeror of the rejected hazardous waste.

(B) For purposes of this chapter and regulations adopted pursuant to this chapter, “offeror” means a person who ships hazardous waste and is responsible for ensuring that the hazardous waste is properly prepared for shipment but who is not an arranger for disposal or a transporter who chooses the location for disposal of the waste.

(3) An offsite hazardous waste facility operator that rejects an entire shipment or a partial shipment of hazardous waste pursuant to this section shall comply with the department’s regulations concerning manifest use, container condition and management, and container packaging, labeling, marking, and placarding with respect to the rejected hazardous waste.

(d) Except as provided in subdivision (e), the generator of hazardous waste who receives a rejected shipment of that hazardous waste may accumulate the rejected hazardous waste onsite for 90 days or less, in accordance with the requirements of paragraph (1) of subdivision (a) of Section 66262.34 of Title 22 of the California Code of Regulations. The generator of the rejected hazardous waste shall label or mark the hazardous waste in a manner that indicates that it is rejected hazardous waste and shall include the date it was received by the generator. If the generator of the rejected hazardous waste commingles it with other hazardous wastes, the shorter of any applicable accumulation time limits shall apply to the commingled hazardous waste.

(e) A transporter of hazardous waste, that consolidates shipments of waste pursuant to Section 25160.2 and whose consolidated shipment is rejected by an offsite hazardous waste facility, may hold that shipment on the transport vehicle at the transporter’s facility for no more than 10 days from the date the shipment is rejected, consistent with paragraph (3) of subdivision (b) of Section 25123.3. The transporter may not commingle the consolidated shipment with any other waste.

(f) A generator of hazardous waste who receives a shipment of rejected waste shall comply with the requirements of ~~Section~~ Sections 66265.71 and 66265.72 of Title 22 of the California Code of Regulations.



(g) To the extent that the United States Environmental Protection Agency adopts regulations under the federal act that preempt or are more stringent than the requirements of this section, offsite hazardous waste facilities, generators, and transporters shall instead comply with those regulations on and after the date those federal regulations become effective in California, or on and after the effective date of regulations adopted by the department in accordance with those federal regulations, whichever date occurs first.

SEC. 202. Section 25184.1 of the Health and Safety Code is amended to read:

25184.1. If any administrative order or decision that imposes a penalty is issued pursuant to this chapter or Chapter 6.8 (commencing with Section 25300), the administrative order or decision has become final, and, if applicable, a petition for judicial review of the final order or decision has not been filed within the time limits prescribed in Section 11523 of the Government Code, the department may apply to the clerk of the appropriate court for a judgment to collect the administrative penalty. The department's application, which shall include a certified copy of the ~~the~~ final administrative order or decision, constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

SEC. 203. Section 25201.1 of the Health and Safety Code is amended to read:

25201.1. (a) A solid waste facility, as defined in Section 40194 of the Public Resources Code, or any recycling facility, that accepts and processes empty aerosol cans and ~~de minimus~~ *de minimis* quantities of nonempty aerosol cans collected as an incidental part of the collection of empty cans for recycling, is exempt from the requirement to obtain a hazardous waste facilities permit or other authorization from the department for purposes of conducting that activity if both of the following conditions are met:

(1) The nonempty aerosol cans are from products that are normally intended for household use and were generated by households.

1 (2) The city, county, or regional agency in the area that the  
2 facility serves provides educational information to the public on  
3 the safe collection and recycling or disposal of empty and  
4 nonempty aerosol cans that encourages, to the maximum extent  
5 feasible, the separation and recycling of empty aerosol cans  
6 through such programs as curbside, dropoff, and buy-back  
7 recycling programs, and the diversion of nonempty aerosol cans  
8 into household hazardous waste collection programs. Issues of  
9 compliance with this subdivision shall be determined by the  
10 California Integrated Waste Management Board or by the  
11 appropriate local enforcement agency.

12 (b) This section is not intended to alter the obligation to manage  
13 as a hazardous waste any nonempty aerosol cans that meet the  
14 requirements of Section 25117, and that are not subject to the  
15 exemption provided in this section.

16 (c) Nothing in this section exempts a solid waste facility that  
17 engages in an activity that requires a hazardous waste facility  
18 permit, other than the acceptance and processing of empty aerosol  
19 cans and de ~~minus~~ *minimis* quantities of nonempty aerosol cans  
20 as an incidental part of the collection of empty cans for recycling,  
21 from the requirement of obtaining a hazardous waste facilities  
22 permit.

23 SEC. 204. Section 25210.6 of the Health and Safety Code is  
24 amended to read:

25 25210.6. (a) On or before December 31, 2005, the  
26 department shall adopt regulations specifying *the* best  
27 management practices for a person managing perchlorate  
28 materials. These practices may include, but are not limited to, all  
29 of the following:

30 (1) Procedures for documenting the amount of perchlorate  
31 materials managed by the facility.

32 (2) Management practices necessary to prevent releases of  
33 perchlorate materials, including, but not limited to, containment  
34 standards, usage, processing and transferring practices, and spill  
35 response procedures.

36 (b) (1) The department shall consult with the State Air  
37 Resources Board, the Office of Environmental Health Hazard  
38 Assessment, the State Water Resources Control Board, the Office  
39 of Emergency Services, the State Fire Marshal, and the California



1 certified unified program agencies forum before adopting  
2 regulations pursuant to subdivision (a).

3 (2) The department shall also, before adopting regulations  
4 pursuant to subdivision (a), review existing federal, state, and local  
5 laws governing the management of perchlorate materials to  
6 determine the degree to which uniform and adequate requirements  
7 already exist, so as to avoid any unnecessary duplication of, or  
8 interference with the application of, those existing requirements.

9 (3) In adopting regulations pursuant to subdivision (a), the  
10 department shall ensure that those regulations are at least as  
11 stringent as, and to the extent practical consistent with, the existing  
12 requirements of Chapter 6.95 (commencing with Section 25500)  
13 and the Uniform Fire Code governing the management of  
14 perchlorate materials.

15 (c) The regulations adopted by the department pursuant to this  
16 section shall be adopted as emergency regulations in accordance  
17 with Chapter 3.5 (commencing with Section 11340) of Part 1 of  
18 Division 3 of Title 2 of the Government Code, and for the purposes  
19 of that chapter, including Section 11349.6 of the Government  
20 Code, the adoption of these regulations is an emergency and shall  
21 be considered by the Office of Administrative Law as necessary  
22 for the immediate preservation of the public peace, health and  
23 safety, and general welfare. Notwithstanding Chapter 3.5  
24 (commencing with Section 11340) of Part 1 of Division 3 of Title  
25 2 of the Government Code, including subdivision (e) of Section  
26 ~~11349.1~~ 11346.1 of the Government Code, any emergency  
27 regulations adopted pursuant to this section shall be filed with, but  
28 not be repealed by, the Office of Administrative Law and shall  
29 remain in effect until revised by the department.

30 (d) The department may implement an outreach effort to  
31 educate persons who manage perchlorate materials concerning the  
32 regulations promulgated pursuant to subdivision (a).

33 SEC. 205. Section 25360.6 of the Health and Safety Code is  
34 amended to read:

35 25360.6. (a) The department shall, ~~when~~ *if* it determines that  
36 it is practicable and in the public interest, propose a final  
37 administrative or judicial expedited settlement with potentially  
38 responsible parties if ~~such a~~ *the* settlement involves only a minor  
39 portion of the response costs at a facility and, if in the judgment of  
40 the department, either of the following conditions are met:

1 (1) The amount of hazardous substances and the toxic or other  
2 hazardous effects of the hazardous substances contributed by the  
3 potentially responsible party to the facility are minimal in  
4 comparison to the amount and effects of other hazardous  
5 substances at the facility.

6 (2) The potentially responsible party is the owner of the real  
7 property on or in which the facility is located, did not conduct or  
8 permit the generation, transportation, storage, treatment, or  
9 disposal of any hazardous substance at the facility, and did not  
10 contribute to the release or threat of release of a hazardous  
11 substance at the facility through any act or omission. This  
12 paragraph does not apply if the potentially responsible party, at the  
13 time of the purchase of the real property, knew or should have  
14 known that the property was used for the generation,  
15 transportation, storage, treatment, or disposal of any hazardous  
16 substance.

17 (b) A party who has resolved its liability to the state under this  
18 section shall not be liable for claims for contribution regarding  
19 matters addressed in the settlement. A settlement under this section  
20 does not discharge any of the other potentially responsible parties  
21 unless its terms so provide, but it reduces the potential liability of  
22 the others by the amount of the settlement.

23 (c) Any person who enters into a settlement under this section  
24 shall provide any information relevant to the administration of this  
25 chapter that is requested by the department. In order to obtain the  
26 contribution protection provided by subdivision (b), a potentially  
27 responsible party participating in a de ~~minus~~ *minimis* settlement  
28 shall certify that it has responded fully and accurately to all of the  
29 department's requests for information, and that it has provided all  
30 of the relevant documents pertaining to the facility to the  
31 department.

32 (d) Nothing in this section shall be construed to affect the  
33 authority of the department or regional board to reach settlements  
34 with other potentially responsible parties under this chapter.

35 SEC. 206. Section 25501 of the Health and Safety Code is  
36 amended to read:

37 25501. Unless the context indicates otherwise, the following  
38 definitions govern the construction of this chapter:

1 (a) “Administering agency” means the local agency  
2 authorized, pursuant to Section 25502, to implement and enforce  
3 this chapter.

4 (b) “Agricultural handler” means an entity identified in  
5 paragraph (5) of subdivision (c) of Section 25503.5.

6 (c) “Area plan” means a plan established pursuant to Section  
7 25503 by an administering agency for emergency response to a  
8 release or threatened release of a hazardous material within a city  
9 or county.

10 (d) “Business” means an employer, self-employed individual,  
11 trust, firm, joint stock company, corporation, partnership, or  
12 association. For purposes of this chapter, “business” includes a  
13 business organized for profit and a nonprofit business.

14 (e) “Business plan” means a separate plan for each facility,  
15 site, or branch of a business ~~which~~ *that* meets the requirements of  
16 Section 25504.

17 (f) “Certification statement” means a statement signed by the  
18 business owner, operator, or officially designated representative  
19 that attests to all of the following:

20 (1) The information contained in the annual inventory form  
21 most recently submitted to the administering agency is complete,  
22 accurate, and up to date.

23 (2) There has been no change in the quantity of any hazardous  
24 material as reported in the most recently submitted annual  
25 inventory form.

26 (3) No hazardous materials subject to the inventory  
27 requirements of this chapter are being handled that are not listed  
28 on the most recently submitted annual inventory form.

29 (4) The most recently submitted annual inventory form  
30 contains the information required by Section 11022 of Title 42 of  
31 the United States Code.

32 (g) (1) “Certified Unified Program Agency” or “CUPA”  
33 means the agency certified by the secretary to implement the  
34 unified program specified in Chapter 6.11 (commencing with  
35 Section 25404) within a jurisdiction.

36 (2) “Participating Agency” or “PA” means an agency ~~which~~  
37 *that* has a written agreement with the CUPA pursuant to  
38 subdivision (d) of Section 25404.3, and is approved by the  
39 secretary, to implement or enforce one or more of the unified  
40 program elements specified in paragraphs (4) and (5) of

1 subdivision (c) of Section 25404, in accordance with the  
2 provisions of Sections 25404.1 and 25404.2.

3 (3) “Unified Program Agency” or “UPA” means the CUPA,  
4 or its participating agencies to the extent each PA has been  
5 designated by the CUPA, pursuant to a written agreement, to  
6 implement or enforce a particular unified program element  
7 specified in paragraphs (4) and (5) of subdivision (c) of Section  
8 25404. For purposes of this chapter, the UPAs have the  
9 responsibility and authority, to the extent provided by this chapter  
10 and Sections 25404.1 and 25404.2, to implement and enforce only  
11 those requirements of this chapter listed in paragraphs (4) and (5)  
12 of subdivision (c) of Section 25404. The UPAs also have the  
13 responsibility and authority, to the extent provided by this chapter  
14 and Sections 25404.1 and 25404.2, to implement and enforce the  
15 regulations adopted to implement the requirements of this chapter  
16 listed in paragraphs (4) and (5) of subdivision (c) of Section 25404.  
17 After a CUPA has been certified by the secretary, the unified  
18 program agencies shall be the only local agencies authorized to  
19 enforce the requirements of this chapter listed in paragraphs (4)  
20 and (5) of subdivision (c) of Section 25404 within the jurisdiction  
21 of the CUPA.

22 (h) “City” includes any city and county.

23 (i) “Chemical name” means the scientific designation of a  
24 substance in accordance with the nomenclature system developed  
25 by the International Union of Pure and Applied Chemistry or the  
26 system developed by the Chemical Abstracts Service.

27 (j) “Common name” means any designation or identification,  
28 such as a code name, code number, trade name, or brand name,  
29 used to identify a substance by other than by its chemical name.

30 (k) “Department” means the Department of Toxic Substances  
31 Control and “director” means the Director of Toxic Substances  
32 Control.

33 (l) “Emergency rescue personnel” means any public  
34 employee, including, but not limited to, any fireman, firefighter,  
35 or emergency rescue personnel, as defined in Section 245.1 of the  
36 Penal Code, or personnel of a local EMS agency, as designated  
37 pursuant to Section 1797.200, or a poison control center, as  
38 defined by Section 1797.97, who responds to any condition  
39 caused, in whole or in part, by a hazardous material that

1 jeopardizes, or could jeopardize, public health or safety or the  
2 environment.

3 (m) “Handle” means to use, generate, process, produce,  
4 package, treat, store, emit, discharge, or dispose of a hazardous  
5 material in any fashion.

6 (n) “Handler” means any business ~~which~~ *that* handles a  
7 hazardous material.

8 (o) “Hazardous material” means any material that, because of  
9 its quantity, concentration, or physical or chemical characteristics,  
10 poses a significant present or potential hazard to human health and  
11 safety or to the environment if released into the workplace or the  
12 environment. “Hazardous materials” include, but are not limited  
13 to, hazardous substances, hazardous waste, and any material  
14 ~~which~~ *that* a handler or the administering agency has a reasonable  
15 basis for believing that it would be injurious to the health and  
16 safety of persons or harmful to the environment if released into the  
17 workplace or the environment.

18 (p) “Hazardous substance” means any substance or chemical  
19 product for which one of the following applies:

20 (1) The manufacturer or producer is required to prepare a  
21 MSDS for the substance or product pursuant to the Hazardous  
22 Substances Information and Training Act (Chapter 2.5  
23 (commencing with Section 6360) of Part 1 of Division 5 of the  
24 Labor Code) or pursuant to any applicable federal law or  
25 regulation.

26 (2) The substance is listed as a radioactive material in  
27 Appendix B of Chapter 1 of Title 10 of the Code of Federal  
28 Regulations, maintained and updated by the Nuclear Regulatory  
29 Commission.

30 (3) The substances listed pursuant to Title 49 of the Code of  
31 Federal Regulations.

32 (4) The materials listed in subdivision (b) of Section 6382 of  
33 the Labor Code.

34 (q) “Hazardous waste” means hazardous waste, as defined by  
35 Sections 25115, 25117, and 25316.

36 (r) “Office” means the Office of Emergency Services.

37 (s) “Release” means any spilling, leaking, pumping, pouring,  
38 emitting, emptying, discharging, injecting, escaping, leaching,  
39 dumping, or disposing into the environment, unless permitted or  
40 authorized by a regulatory agency.



(t) “Secretary” means the Secretary for Environmental Protection.

(u) “SIC Code” means the identification number assigned by the Standard Industrial Classification Code to specific types of businesses.

(v) “Threatened release” means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or the environment.

(w) “Trade secret” means trade secrets as defined in subdivision (d) of Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

(x) “Unified Program Facility” means all contiguous land and structures, other appurtenances, and improvements on the land ~~which~~ *that* are subject to the requirements of paragraphs (4) and (5) of subdivision (c) of Section 25404.

SEC. 207. Section 32111 of the Health and Safety Code is amended to read:

32111. (a) A member of a health care district’s medical or allied health professional staff who is an officer of the district shall not be deemed to be “financially ~~interest,~~” *interested,*” for purposes of Section 1090 of the Government Code, in any of the contracts set forth in subdivision (b) made by any district body or board of which the officer is a member if all of the following conditions are satisfied:

(1) The officer abstains from any participation in the making of the contract.

(2) The officer’s relationship to the contract is disclosed to the body or board and noted in its official records.

(3) If the requirements of paragraphs (1) and (2) are satisfied, the body or board does both of the following, without any participation by the officer:

(A) Finds that the contract is fair to the district and in its best interest.

(B) Authorizes the contract in good faith.

(b) Subdivision (a) shall apply to the following contracts:

(1) A contract between the district and the officer for the officer to provide professional services to the district’s patients, employees, or medical staff members and their respective

dependents, provided that similar contracts exist with other staff members and the amounts payable under the contract are no greater than the amounts payable under similar contracts covering the same or similar services.

(2) A contract to provide services to covered persons between the district and any insurance company, health care service plan, employer, or other entity ~~which~~ *that* provides health care coverage, and ~~which~~ *that* also has a contract with the officer to provide professional services to its covered persons.

(3) A contract in which the district and the officer are both parties if other members of the district's medical or allied health professional staff are also parties, directly or through their professional corporations or other practice entities, provided the officer is offered terms no more favorable than those offered any other party who is a member of the district's medical or allied health professional staff.

(c) This section does not permit an otherwise prohibited individual to be a member of the board of directors of a district, including, but not limited to, individuals described in Section 32110 of this code or in Section 53227 of the Government Code. Nothing in this section shall authorize a contract that would otherwise be prohibited by Section 2400 of the Business and Professions Code.

(d) For purposes of this section, a contract entered into by a professional corporation or other practice entity in which the officer has an interest shall be deemed the same as a contract entered into by the officer directly.

SEC. 208. Section 33320.8 of the Health and Safety Code is amended to read:

33320.8. (a) The territory ~~which~~ *that* is described in subdivision (b) shall not be subject to the requirements of subdivision (b) of Section 33321.5.

(b) All lands not enforceably restricted within the Counties of Riverside and San Bernardino, within the spheres of influence of the Cities of Chino and Ontario as of January 1, 1996, according to the United States Government Township Plat thereof, described as follows:

(1) That portion of Township 2 South, Range 7 West, San Bernardino Meridian, in the County of San Bernardino, State of California, described as follows:

1 Beginning at the center line intersection of Euclid Avenue and  
2 Riverside Drive, said intersection being on the existing city limits  
3 of Ontario; thence east along said city limits line and continuing  
4 along said line, following all of its various courses to the  
5 intersection of Riverside Drive with the San Bernardino County  
6 line; thence leaving said city limits line south and southwesterly  
7 along said county line to the north line of Section 27, said  
8 Township 2 South, Range 7 West; thence west along said north  
9 line, being also the center line of Remington Avenue, to the center  
10 line of Carpenter Avenue; thence north along said center line to the  
11 center line of Merrill Avenue; thence west along said center line  
12 to the east line of Grove Avenue; thence north along said east line  
13 to the north line of Merrill Avenue; thence west along said north  
14 line and its prolongation to the center line of Euclid Avenue;  
15 thence north along said center line to the Point of Beginning.

16 (2) Those portions of Townships 2 and 3 South, Ranges 7 and  
17 8 West, San Bernardino Meridian, in the County of San  
18 Bernardino, State of California, described as follows:

19 Beginning at the intersection of the center line of Merrill ~~avenue~~  
20 Avenue with the east line of Grove Avenue; thence east along said  
21 center line of Merrill Avenue to the center line of Carpenter  
22 Avenue; thence south along said center line to the north line of  
23 Government Lot 1 of Section 27, said Township 2 South, Range  
24 7 West, said point being also on the center line of Remington  
25 Avenue; thence east along said center line to the San Bernardino  
26 County line; thence southwesterly, southerly and westerly along  
27 said county line to the center line of State Highway 71 being also  
28 on the existing city limits line of Chino Hills; thence northwesterly  
29 along said center line and city limits line to the southwesterly  
30 prolongation of the center line of Pine Avenue; thence easterly  
31 along said prolongation and center line to the center line of Chino  
32 Creek; thence southeasterly along said center line to the west line  
33 of Section 6, said Township 3 South, Range 7 West; thence north  
34 along said west line and the west line of Section 31, said Township  
35 2 South, Range 7 West, to the center line of Pine Avenue; thence  
36 westerly along said center line to the center line of El Prado Road,  
37 formerly Central Avenue; thence northwesterly along said center  
38 line to the center line of Kimball Avenue, said point being on the  
39 existing city limits of Chino; thence east along said city limits line  
40 and continuing along said city limits, following all of its various



courses to the center line intersection of Kimball Avenue and vacated Campus Avenue; thence leaving said city limits line east along said center line of Kimball Avenue to the center line of Grove Avenue; thence north along said center line to the center line of Remington Avenue, vacated; thence east along said vacated center line to the east line of Grove Avenue; thence north along said last line to the Point of Beginning.

(3) Those portions of Sections 6, 7, 18, 19, 30, and 31, Township 2 South, Range 6 West, San Bernardino Meridian; Sections 23, 24, 25, 26, 27, 34, 35, and 36, Township 2 South, Range 7 West, San Bernardino Meridian; and Sections 2, 3, and 10, Township 3 South, Range 7 West, San Bernardino Meridian, within the unincorporated area of the County of Riverside.

SEC. 209. Section 33492.40 of the Health and Safety Code is amended to read:

33492.40. (a) Notwithstanding Section 33320.1, the requirement that privately owned land within a project area be “predominantly urbanized,” as that term is defined in subdivision (b) of Section 33320.1, shall not apply to privately owned land within a project area, if the privately owned land is adjacent or in proximity to a military facility or installation ~~which~~ *that* is proposed to be closed pursuant to Public Law 100-526 and the inclusion of the privately owned land is found by an entity formed pursuant to subdivision (b) to be necessary for the effective redevelopment of the military facility or installation and the adjacent area.

(b) The legislative bodies for communities having territory within, adjacent to, or in proximity to a military facility or installation described in subdivision (a) may create a separate joint powers agency pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, which shall have and exclusively exercise powers of an agency in furtherance of the redevelopment of a project area approved by the joint powers agency. The joint powers agency so formed shall include as one of its members the county in which the project area is located. In addition to the powers of an agency, the joint powers agency so formed shall also act as the legislative body and planning commission for all approvals and actions required by this part of legislative bodies and planning commissions for the adoption and implementation of a redevelopment plan. However,

1 all land use, planning, and development decisions with regard to  
2 the land within the project area shall continue to be under the  
3 control and jurisdiction of each of the respective local legislative  
4 bodies or planning commissions, as applicable.

5 (c) The territory included within the project and project area  
6 may be contiguous or noncontiguous, and any project area may be  
7 located in whole or in part within one or more of the communities  
8 impacted by the closure of the military facility or installation, and  
9 the land to be included within the project area within the  
10 community or communities in proximity to the military facility or  
11 installation shall be found necessary for the effective  
12 redevelopment of the military facility or installation and the  
13 adjacent area. A project area shall not include territory outside the  
14 jurisdiction of the communities that are parties to the joint powers  
15 agency without the consent of the legislative body having  
16 jurisdiction over the territory proposed to be included within the  
17 project area.

18 (d) A redevelopment plan for the project area shall contain all  
19 of the provisions required by this part. However, if the agency  
20 finds, based on substantial evidence on the record, that compliance  
21 with the requirements of Sections 33333.2 and 33334.1 would  
22 make it impracticable to achieve the policies of this section, the  
23 agency may eliminate or modify the requirements of Sections  
24 33333.2 and 33334.1.

25 (e) The redevelopment plan shall provide for either of the  
26 following:

27 (1) A Low- and Moderate-Income Housing Fund, as required  
28 by Section 33334.2.

29 (2) A deferral for depositing all or part of the 20 percent of taxes  
30 allocated to the agency pursuant to Section 33670 in the Low- and  
31 Moderate-Income Housing Fund if the agency, after conducting a  
32 noticed public hearing, makes, and the executive committee of the  
33 Southern California Association of Governments reviews and  
34 approves, findings supported by substantial evidence that all of the  
35 following apply:

36 (A) The military facility or installation cannot be acquired or  
37 developed by private enterprise without the assistance of the  
38 agency.

39 (B) There are no feasible alternative means of financing the  
40 acquisition or development of the military facility or installation



1 other than by utilizing the low- and moderate-income housing  
2 portion of the taxes ~~which~~ *that* are allocated to the agency pursuant  
3 to subdivision (b) of Section 33670.

4 (C) Failure of the agency to finance the acquisition or  
5 development of the military facility or installation would lead to  
6 serious economic hardship and job loss.

7 (D) The redevelopment plan shall specify the period during  
8 which less than 20 percent of the taxes ~~which~~ *that* are allocated to  
9 the agency pursuant to subdivision (b) of Section 33670, is to be  
10 deposited in the Low- and Moderate-Income Housing Fund. The  
11 redevelopment plan shall also contain a repayment plan which  
12 specifies a date at which time the agency will have made up the  
13 deficit created by the deferral, including repayment of the interest  
14 at the highest rate received by the agency on funds it deposits  
15 during the period of deferral. The repayment plan shall reduce the  
16 deficit in the shortest feasible time consistent with the needs of the  
17 agency, as specified in the agency's findings.

18 (f) The joint powers agency acting as the agency, the legislative  
19 body or the planning commission, shall follow all procedures  
20 under this part applicable to the adoption and amendment of  
21 redevelopment plans, except with respect to ~~Sections~~ *Section*  
22 33347.5, *Sections* 33353 to 33353.6, inclusive, Sections 33354.4  
23 to 33354.6, inclusive, and Section 33385.

24 (g) The agency shall create a fiscal advisory group to consult  
25 with each affected taxing agency and to advise and report to the  
26 agency in the manner required of a fiscal review committee by  
27 Section 33353.5 on any potential fiscal impact upon affected  
28 taxing agencies within the project area. The fiscal advisory group  
29 shall consist of the financial officer or treasurer of each city and  
30 each county ~~which~~ *that* created the joint powers authority.

31 (h) The agency shall prepare and distribute to each affected  
32 taxing agency a report ~~which~~ *that* includes the information  
33 required by Section 33328. The agency shall also prepare an  
34 analysis of the report required of a fiscal review committee  
35 pursuant to subdivision (m) of Section 33352 and an analysis of the  
36 report required of the fiscal advisory group pursuant to subdivision  
37 (g).

38 (i) As used in this section, "in proximity to" means within  
39 three miles of the boundary of Norton Air Force Base and within  
40 eight miles of George Air Force Base.



1 (j) The Legislature finds and declares that the closure of two or  
2 more military facilities or installations within the County of San  
3 Bernardino will cause serious economic hardship in that county,  
4 including loss of jobs, increased unemployment, deterioration of  
5 properties and land utilization and undue disruption of the lives  
6 and activities of the people. Therefore, the Legislature finds and  
7 declares that to avoid serious economic hardship and  
8 accompanying blight, it is necessary to enact this act which shall  
9 apply only within the County of San Bernardino. In enacting this  
10 act, it is the policy of the Legislature to assist communities within  
11 the County of San Bernardino in their attempt to preserve the  
12 military facilities and installations for their continued use as  
13 airports and aviation-related purposes.

14 It is the intent of the Legislature and the commitment of the local  
15 authorities to ensure that the existing airfields at both Norton Air  
16 Force Base and George Air Force Base are protected, developed,  
17 and enhanced as civil aviation public use airports. Therefore, the  
18 joint powers authorities authorized by this section should make  
19 every reasonable effort to guarantee that these vital airport  
20 facilities are retained for general aviation use now and into the  
21 future.

22 (k) Any joint powers agreement entered into pursuant to this  
23 section shall provide that the financial needs of each of the parties  
24 shall be considered prior to adoption of a redevelopment plan, and  
25 may provide that the number of years shall be limited during which  
26 bonded indebtedness may be paid using taxes ~~which~~ *that* are  
27 allocated to the agency pursuant to subdivision (b) of Section  
28 33670.

29 (1) A joint powers agency operating within the area of Norton  
30 Air Force Base shall appoint a project area citizens committee for  
31 the purpose of consultation and advice regarding policy matters  
32 that relate to planning and programs affecting the residents,  
33 businesses, and educational institutions within the project area,  
34 implementation of the redevelopment plan, and the development  
35 and implementation of amendments to the redevelopment plan.

36 (2) The committee shall be comprised of residential owners,  
37 residential tenants, business owners, small business owners,  
38 business tenants, educational institution representatives, and  
39 community groups currently operating, living, or working within  
40 the project area. The membership of the Project Area Citizens





Committee shall be appointed by the legislative body of the agency and shall be representative, both racially and ethnically, of the people who live and work within the project area.

(3) For the purposes described above, the committee shall meet at ~~least~~ *least* once quarterly or more often to review policy matters and implementation issues as determined necessary by the legislative body.

(l) Amendments to any redevelopment plans adopted pursuant to this section shall not be required to comply with the provisions of Section 33452, provided that notice of the public hearing for any amendment adopted pursuant to ~~Section 33540, and following~~ *Article 12 (commencing with Section 33450) of Chapter 4*, is published pursuant to Section 6063 of the Government Code and mailed by regular mail to the governing body of each of the taxing agencies ~~which~~ *that* levies taxes upon any property in the project area designated in the redevelopment plan as proposed to be amended.

SEC. 210. Section 35987 of the Health and Safety Code is amended and renumbered to read:

~~35987.~~

37986. (a) The council shall meet at the times and in places it deems necessary, but no less than once a quarter. Whenever possible, meetings shall be held in Sacramento in state facilities.

(b) Under no circumstances shall the council permit absentee or proxy voting at any of its proceedings. However, a vote by a designee, as provided in paragraphs (1) to (8), inclusive, of subdivision (a), and paragraphs (1) to (5), inclusive, of subdivision (d), of Section 37983, shall not be construed to be an absentee or proxy vote under this subdivision.

(c) Council members may receive reimbursement for travel costs directly related to council attendance if funding is available.

(d) The council shall apply for grants and may seek contributions from private industry to fund its operations.

(e) The council shall actively solicit and accept funds from industry, foundations, or other sources to promote and fund research and development of dual technologies, to identify alternative applications of military technologies, to initiate market research for identifying possible defense conversion products, to establish worker and business training programs, and to operate pilot projects to evaluate and demonstrate useful approaches.

1 These efforts should be coordinated with the regional technology  
2 alliances.

3 SEC. 211. Section 35988 of the Health and Safety Code is  
4 amended and renumbered to read:

5 ~~35988.~~

6 37987. In addition to the duties specified in Section 37985,  
7 the council shall do all of the following:

8 (a) At the request of a council member and upon majority vote  
9 of the council, the council may review actions or programs by state  
10 agencies that may affect military base retention and reuse and offer  
11 comments or suggest changes to better integrate these actions or  
12 programs into the overall state strategic plan required pursuant to  
13 subdivision (a) of Section 37985.

14 (b) The council shall prepare a study considering strategies for  
15 the long-term protection of lands adjacent to military bases from  
16 development that would be incompatible with the continuing  
17 missions of those bases. The study shall include the effects of local  
18 land use encroachment, environmental impact considerations, and  
19 population growth issues. The study shall recommend basic  
20 criteria to assist local governments in identifying lands where  
21 incompatible development may adversely impact the long-term  
22 missions of these bases. The study shall also identify potential  
23 mechanisms, including recommendations for changes in law at the  
24 local or state level, to address these issues. In conducting this  
25 study, the council may use the Naval Air Station at Lemoore and  
26 Edwards Air Force Base as case studies.

27 The council shall hold public hearings on this study, including  
28 at least one in the vicinity of either Lemoore or Edwards.  
29 Notwithstanding Section 7550.5 of the Government Code, the  
30 council shall prepare and submit to the Governor and the  
31 Legislature by November 30, 2000, a report on this study with any  
32 recommendations.

33 SEC. 212. Section 35989 of the Health and Safety Code is  
34 amended and renumbered to read:

35 ~~35989.~~

36 37988. The Department of Housing and Community  
37 Development with input and assistance from the council, shall  
38 establish a Defense Retention Grant Program to grant funds to  
39 communities with military bases to assist them in developing a  
40 retention strategy. The agency may use grant criteria similar to

1 those for existing defense conversion grant programs as a basis for  
2 developing the new grant program. To discourage multiple grant  
3 applications for individual defense installations in a region, the  
4 criteria shall be drafted to encourage a single application for grant  
5 funds to develop, where appropriate, a single, regional defense  
6 retention strategy. The structure, requirements, administration,  
7 and funding procedures of the grant program shall be submitted to  
8 the Legislature for review at least 90 days prior to making the first  
9 grant disbursement. The agency may make no grant award without  
10 the local community providing at least 50 percent or more in  
11 matching funds or in-kind services.

12 SEC. 213. Section 35990 of the Health and Safety Code is  
13 amended and renumbered to read:

14 ~~35990.~~

15 37989. The Department of Housing and Community  
16 Development shall adopt regulations to implement the programs  
17 authorized in this chapter. The agency shall adopt these regulations  
18 as emergency regulations in accordance with Chapter 3.5  
19 (commencing with Section 11340) of Part 1 of Division 3 of Title  
20 2 of the Government Code, and for purposes of that chapter,  
21 including Section 11349.6 of the Government Code, the adoption  
22 of the regulations shall be considered by the Office of  
23 Administrative Law to be necessary for the immediate  
24 preservation of the public peace, health and safety, and general  
25 welfare. Notwithstanding subdivision (e) of Section 11346.1 of  
26 the Government Code, the regulations shall be repealed within 180  
27 days after their effective date, unless the agency complies with  
28 Chapter 3.5 (commencing with Section 11340) of Part 1 of  
29 Division 3 of Title 2 of the Government Code as provided in  
30 subdivision (e) of Section 11346.1 of the Government Code.

31 SEC. 214. Section 35991 of the Health and Safety Code is  
32 amended and renumbered to read:

33 ~~35991~~

34 37990. This part shall remain in effect only until January 1,  
35 2007, and as of that date is repealed, unless a later enacted statute,  
36 that is enacted before January 1, 2007, deletes or extends that date.

37 SEC. 215. Section 39011.5 of the Health and Safety Code is  
38 amended to read:

39 39011.5. (a) “Agricultural source of air pollution” or  
40 “agricultural source” means a source of air pollution or a group

1 of sources used in the production of crops, or the raising of fowl  
2 or animals located on contiguous property under common  
3 ownership or control that meets any of the following criteria:

4 (1) Is a confined animal facility, including, but not limited to,  
5 any structure, building, installation, barn, corral, coop, feed  
6 storage area, milking parlor, or system for the collection, storage,  
7 treatment, and distribution of liquid and solid manure, if  
8 domesticated animals, including, but not limited to, cattle, calves,  
9 horses, sheep, goats, swine, rabbits, chickens, turkeys, or ducks are  
10 corralled, penned, or otherwise caused to remain in restricted areas  
11 for commercial agricultural purposes and feeding is by means  
12 other than grazing.

13 (2) Is an internal combustion engine used in the production of  
14 crops or the raising of fowl or animals, including, but not limited  
15 to, an engine subject to Article 1.5 (commencing with Section  
16 41750) of Chapter 3 of Part 4 except an engine that is used to propel  
17 implements of husbandry, as that term is defined in Section 36000  
18 of the Vehicle Code, as that section existed on January 1, 2003.  
19 Notwithstanding subdivision (b) of Section 39601, the state board  
20 may not revise this definition for the purposes of this section.

21 (3) Is a Title V source, as that term is defined in Section  
22 39053.5, or is a source that is otherwise subject to regulation by a  
23 district pursuant to this division or the federal Clean Air Act (42  
24 U.S.C. Sec. 7401 et seq.).

25 (b) Any district rule or regulation affecting stationary sources  
26 on agricultural operations adopted on or before January 1, 2004,  
27 is applicable to an ~~agriculture~~ *agricultural* source.

28 (c) Nothing in this section limits the authority of a district to  
29 regulate a source, including, but not limited to, a stationary source  
30 that is an agricultural source, over which it otherwise has  
31 jurisdiction pursuant to this division, or pursuant to the federal  
32 Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or  
33 regulations adopted pursuant to that act that were in effect on or  
34 before January 1, 2003, or to exempt an agricultural source from  
35 any requirement otherwise applicable under ~~Sections~~ *Section*  
36 40724 or 42301.16, based upon a finding by the district in a public  
37 hearing that the aggregate emissions from that source do not  
38 exceed a de ~~minimus~~ *minimis* level of more than one ton of  
39 particulate matter, nitrogen oxides, or volatile organic compounds  
40 per year.

1 SEC. 216. Section 39614 of the Health and Safety Code is  
2 amended to read:

3 39614. (a) For the purposes of this section, the following  
4 terms have the following meanings:

5 (1) “Cost-effective” or “cost-effectiveness” means either of  
6 the following, as applicable:

7 (A) For the state board, a determination using the standards,  
8 formulas, and criteria used by the state board to calculate  
9 cost-effectiveness for other regulations.

10 (B) For a district, a determination using the standards and  
11 process described in Section 40922.

12 (2) “Implementation schedule” means a schedule that  
13 specifies dates for final adoption, implementation, and sequencing  
14 of control measures pursuant to this section.

15 (3) “Measures” means any of the following:

16 (A) Emissions limits, control technologies, or performance  
17 standards designed to limit emissions for a source or source  
18 category.

19 (B) Examples of adopted state or local district regulations.

20 (C) Examples of programs.

21 (4) “PM 2.5” means particulate matter of 2.5 microns and  
22 smaller in size.

23 (5) “PM 10” means particulate matter of 10 microns and  
24 smaller in size.

25 (6) “Programs” means any state or local program that reduces  
26 either of the following:

27 (A) Smoke from agricultural or wood burning sources.

28 (B) Diesel emissions.

29 (b) On or before January 1, 2005, the state board, in  
30 consultation with the districts, and after at least one public  
31 workshop, shall develop and adopt at a public meeting a list of the  
32 most readily available, feasible, and cost-effective proposed  
33 control measures, based on rules, regulations, and programs  
34 existing in California as of January 1, 2004, that could be  
35 employed by the state board and the districts to reduce PM 2.5 and  
36 PM 10 and make progress toward attainment of state and federal  
37 PM 2.5 and PM 10 standards. The list shall include measures to  
38 reduce emissions from new and existing stationary, mobile, and  
39 area sources, and shall indicate whether those measures apply to  
40 new, modified, or existing sources. In developing the list, the state

1 board shall take into account information it determines to be  
2 appropriate and relevant from emissions inventories, air  
3 monitoring data, and other scientific studies, including, but not  
4 limited to, information associated with compliance with the  
5 federal ambient air standards for particulate matter. The list shall  
6 include control measures for all of the following emission source  
7 categories:

8 (1) Stationary combustion sources.

9 (2) Woodstoves and fireplaces.

10 (3) Commercial grilling operations.

11 (4) Agricultural burning.

12 (5) Construction and grading operations.

13 (6) Diesel-powered engines used in stationary and mobile  
14 applications, including, but not limited to, control measures that  
15 do any of the following:

16 (A) Reduce heavy-duty vehicle idling.

17 (B) Require the use of ultra low-sulfur diesel fuel.

18 (C) Encourage, and require to the extent authorized by law,  
19 fleet turnover or the pull-ahead of new technology.

20 (D) Use public funds, including, but not limited to, Congestion  
21 Mitigation and Air Quality Improvement Program ~~(CMAQ)~~ funds  
22 to upgrade, retrofit, or replace heavy-duty engines with less  
23 polluting alternatives.

24 (E) Promote increased purchase and use by government  
25 agencies of low-emission heavy-duty vehicles and equipment.

26 (c) The state board shall specify in the list adopted pursuant to  
27 subdivision (a) whether a proposed control measure is intended to  
28 reduce emissions of PM 2.5, PM 10, or both, and whether it is a  
29 proposed control measure for adoption by the state board or by a  
30 district. The state board and the districts shall adopt and implement  
31 only those control measures within their respective jurisdictions in  
32 accordance with applicable provisions of state law.

33 (d) (1) Not later than July 31, 2005, after at least one public  
34 workshop and a noticed public hearing, and in a manner otherwise  
35 in accordance with this section, the state board shall adopt an  
36 implementation schedule for the state measures on the list  
37 developed pursuant to subdivision (b) and each district shall adopt  
38 an implementation schedule for the most cost-effective local  
39 measures from the list for that district after prioritizing the  
40 measures based on the factors identified in subparagraph (A) of

1 paragraph (2). The state board and each district, in carrying out the  
2 requirements of this section, shall adopt and implement control  
3 measures to reduce PM 2.5 and PM 10 from stationary, area, and  
4 mobile sources, and to make progress toward attainment of state  
5 and federal PM 2.5 and PM 10 standards.

6 (2) In developing an implementation schedule pursuant to this  
7 subdivision, the state board and each district shall do all of the  
8 following:

9 (A) Prioritize adoption and implementation of proposed  
10 control measures based on the effect individual control measures  
11 will have on public health, air quality, and emission reductions,  
12 and on the cost-effectiveness of each control measure.

13 (B) Strive to integrate the scheduling of control measures with  
14 the federal planning process for attainment of the federal ambient  
15 air quality standards for particulate matter in an efficient manner,  
16 to the extent that integration does not delay the adoption of control  
17 measures.

18 (3) An implementation schedule adopted by a district pursuant  
19 to this subdivision may not include a control measure that meets  
20 any of the following criteria:

21 (A) Is substantially similar to a control measure already  
22 adopted by the district, as determined by the district.

23 (B) Is substantially similar to a control measure scheduled for  
24 adoption by the district within two years of the adoption of the  
25 implementation schedule, as determined by the district.

26 (C) The district has determined there is a readily available,  
27 feasible, and cost-effective alternative control measure that will  
28 achieve an equivalent or greater emission reduction.

29 (D) Is intended to reduce emissions of a precursor to PM 2.5 or  
30 PM 10, if the district has adopted and implemented the measure or  
31 scheduled the measure for adoption within two years of the  
32 adoption of the implementation schedule as part of the district's  
33 ozone attainment plan pursuant to subdivision (a) or (b) of Section  
34 40914.

35 (4) If a district determines that a readily available, feasible, and  
36 cost-effective alternative control measure exists as described in  
37 subparagraph (C) of paragraph (3), the district shall adopt that  
38 measure.

39 (e) Nothing in this section requires a district to adopt a control  
40 measure to further regulate emissions from any source that



1 operates under, or requires a district to modify, either of the  
2 following programs:

3 (1) A market-based incentive program that complies with  
4 Section 39616.

5 (2) An interchangeable emission reduction credit program that  
6 is consistent with the methodology adopted by the state board  
7 pursuant to Section 39607.5.

8 (f) Nothing in this section is intended to alter or affect any of  
9 the following:

10 (1) The authority of the state board or a district to adopt a  
11 control measure for PM 2.5 and PM 10 pursuant to this division.

12 (2) The authority of the state board or a district over  
13 diesel-powered engines established pursuant to this division.

14 (3) The authority of a district to modify either of the programs  
15 described in ~~paragraphs~~ *paragraph* (1) or (2) of subdivision (e).

16 (4) The authority of a district to adopt measures necessary to  
17 attain state or federal air quality standards.

18 (g) In identifying control measures for woodstoves and  
19 fireplaces pursuant to paragraph (2) of subdivision (b), the state  
20 board shall include a consideration of rules and regulations  
21 encouraging the use of wood fuel appliances that meet the  
22 standards established in Subpart AAA of Part 60 of Title 40 of the  
23 Code of Federal Regulations.

24 (h) In adopting the list and implementation schedule pursuant  
25 to this section, the state board is not subject to the rulemaking  
26 provisions of Chapter 3.5 (commencing with Section 11340) of  
27 Part 1 of Division 3 of Title 2 of the Government Code.

28 (i) Not later than January 1, 2009, the state board shall prepare  
29 a report, and make available to the public, on the actions taken by  
30 the state board and local districts to comply with this section. The  
31 report shall include, but is not limited to, all of the following:

32 (1) Adopted and proposed rules.

33 (2) Regulations and programs.

34 (3) Air quality and public health impacts of state and district  
35 actions taken pursuant to this section.

36 (4) Cost-effectiveness of rules, regulations, and programs  
37 implemented pursuant to this section.

38 (5) Recommendations for further actions to assist in achieving  
39 state air quality standards for particulate matter.

(j) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 217. Section 39661 of the Health and Safety Code is amended to read:

39661. (a) (1) Upon receipt of the evaluation and recommendations prepared pursuant to Section 39660, the state board, in consultation with, and with the participation of, the office, shall prepare a report in a form ~~which~~ *that* may serve as the basis for regulatory action regarding a particular substance pursuant to subdivisions (b) and (c) of Section 39662.

(2) The report shall include and be developed in consideration of the evaluation and recommendations of the office.

(b) The report, together with the scientific data on which the report is based, shall, with the exception of trade secrets, be made available to the public and shall be formally reviewed by the scientific review panel established pursuant to Section 39670. The panel shall review the scientific procedures and methods used to support the data, the data itself, and the conclusions and assessments on which the report is based. Any person may submit any information for consideration by the panel, which may, at its discretion, receive oral testimony. The panel shall submit its written findings to the state board within 45 days after receiving the report. The panel may, however, petition the state board for an extension of the deadline, which may not exceed 15 working days.

(c) If the scientific review panel determines that the health effects report is not based upon sound scientific knowledge, methods, or practices, the report shall be returned to the state board, and the state board, in consultation with, and with the participation of, the office, shall prepare revisions to the report, which shall be resubmitted, within 30 days following receipt of the panel's determination, to the scientific review panel, which shall review the report in conformance with subdivision (b) prior to a formal proposal by the state board pursuant to Section 39662.

SEC. 218. Section 40500.5 of the Health and Safety Code is amended to read:

40500.5. (a) Notwithstanding Section 40500, the south coast district board may prohibit the granting of variances by the hearing board from the provisions of a market-based incentive program adopted pursuant to Section 39616 that establish procedures for

1 assessing emissions during periods when monitoring or reporting  
2 systems are not operating as required.

3 (b) The south coast district board may prohibit the granting of  
4 variances by the hearing board from the minimum federal  
5 requirements for new source performance standards, or for  
6 national emissions standards for hazardous air pollutants, under  
7 Sections 7411 and 7412 of Title 42 of the ~~United~~ *United States*  
8 Code, unless the district rule at issue is more stringent than the  
9 federal requirement. The south coast district board shall not  
10 prohibit the granting of ~~such~~ a variance if the petitioner for the  
11 variance has obtained a waiver from the Environmental Protection  
12 Agency of the federal requirement at issue and the variance would  
13 be consistent with the waiver.

14 SEC. 219. Section 40724.6 of the Health and Safety Code is  
15 amended to read:

16 40724.6. (a) On or before July 1, 2005, the state board shall  
17 review all available scientific information, including, but not  
18 limited to, emissions factors for confined animal facilities, and the  
19 effect of those facilities on air quality in the basin and other  
20 relevant scientific information, and develop a definition for the  
21 source category of a “large confined animal facility” for the  
22 purposes of this section. In developing that definition, the state  
23 board shall consider the emissions of air contaminants from those  
24 sources as they may affect the attainment and maintenance of  
25 ambient air quality standards.

26 (b) Not later than July 1, 2006, each district that is designated  
27 as a federal nonattainment area for ozone as of January 1, 2004,  
28 shall adopt, implement, and submit for inclusion in the state  
29 implementation plan, a rule or regulation that requires the owner  
30 or operator of a large confined animal facility, as defined by the  
31 state board pursuant to subdivision (a), to obtain a permit from the  
32 district to reduce, to the extent feasible, emissions of air  
33 contaminants from the facility.

34 (c) A district may require a permit for a large confined animal  
35 facility with actual emissions that are less than one-half of any  
36 applicable emissions threshold for a major source in the district for  
37 any air contaminant, including, but not limited to, fugitive  
38 emissions in a manner similar to other source categories, if prior  
39 to imposing that requirement the district makes both of the  
40 following determinations in a public hearing:



1 (1) A permit is necessary to impose or enforce reductions in  
2 emissions of air pollutants that the district show cause or  
3 contribute to a violation of a state or federal ambient air quality  
4 standard.

5 (2) The requirement for a source or category of sources to  
6 obtain a permit would not impose a burden on those sources that  
7 is significantly more burdensome than permits required for other  
8 similar sources of air pollution.

9 (d) The rule or regulation adopted pursuant to subdivision (b)  
10 shall do all of the following:

11 (1) Require the owner or operator of each large confined  
12 animal facility to submit an application for a permit within six  
13 months from the date the rule or regulation is adopted by the  
14 district that includes both of the following:

15 (A) The information that the district determines is necessary to  
16 prepare an emissions inventory of all regulated air pollutants  
17 emitted from the operation, including, but not limited to, precursor  
18 and fugitive emissions, using emission factors approved by the  
19 state board in a public hearing.

20 (B) An emissions mitigation plan that demonstrates that the  
21 facility will use reasonably available control technology in  
22 moderate and serious nonattainment areas, and best available  
23 retrofit control technology in severe and extreme nonattainment  
24 areas, to reduce emissions of pollutants that contribute to the  
25 nonattainment of any ambient air quality standard, and that are  
26 within the district's regulatory authority.

27 (2) Require the district to act upon an application for permit  
28 submitted pursuant to paragraph (1) within six months of a  
29 completed application, as determined by the district.

30 (3) Require the owner or operator to implement the plan  
31 contained in the permit approved by the district, and ~~shall~~ establish  
32 a reasonable period, of not more than three years, after which each  
33 permit shall be reviewed by the district and updated to reflect  
34 changes in the operation or the feasibility of mitigation measures.  
35 The updates required by this paragraph are not required to be  
36 submitted for inclusion into the state implementation plan.

37 (4) Establish a reasonable compliance schedule for facilities to  
38 implement control measures within one year of the date on which  
39 the permit is approved by the district, and shall provide for 30 ~~days~~  
40 *days*' public notice and comment on any draft permit.

1 ~~(d)~~

2 (e) Prior to adopting a rule or regulation pursuant to  
3 subdivision (b), a district shall, to the extent data are available,  
4 perform an assessment of the ~~impacts~~ *impact* of the rule or  
5 regulation. The district shall consider the impacts of the rule or  
6 regulation in a public hearing, and make a good faith effort to  
7 minimize any adverse impacts. The assessment shall include all of  
8 the following:

9 (1) The category of sources affected, including, but not limited  
10 to, the approximate number of affected sources, and the size of  
11 those sources.

12 (2) The nature and quantity of emissions from the category, and  
13 the significance of those emissions in adversely affecting public  
14 health and the environment and in causing or contributing to the  
15 violation of a state or federal ambient air quality standard.

16 (3) The emission reduction potential.

17 (4) The impact on employment in, and the economy of, the  
18 region affected.

19 (5) The range of probable costs to affected sources and  
20 businesses.

21 (6) The availability and cost-effectiveness of alternatives.

22 (7) The technical and practical feasibility.

23 (8) Any additional information on impacts that is submitted to  
24 the district board for consideration.

25 ~~(e)~~

26 (f) Nothing in this section shall delay or otherwise affect any  
27 action taken by a district to reduce emissions of air contaminants  
28 from agricultural sources, or any other requirements imposed on  
29 a district or a source of air pollution pursuant to the federal Clean  
30 Air Act (42 U.S.C. Sec. 7401 et seq.).

31 ~~(f)~~

32 (g) In adopting a rule or regulation pursuant to this section, a  
33 district shall comply with all applicable requirements of this  
34 division, including, but not limited to, the requirements  
35 established pursuant to ~~Section~~ *Sections* 40703, 40727, and  
36 40728.5.

37 ~~(g)~~

38 (h) A permitholder may appeal any district determination or  
39 decision required by this section pursuant to Section 42302.1, in  
40 addition to any other applicable remedy provided by law.

~~(h)~~

(i) Nothing in this section authorizes a district to adopt a rule or regulation that is duplicative of a rule or regulation adopted pursuant to Sections 40724 and 40724.5.

~~(i)~~

(j) Nothing in this section limits the authority of a district to regulate a source, including, but not limited to, a stationary source that is an agricultural source over which it otherwise has jurisdiction pursuant to this division or the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or any rules or regulations adopted pursuant to that act. Nothing in this section shall delay or otherwise affect any action taken by a district to reduce emissions of air contaminants from agricultural sources, or any other requirements imposed upon a district or a source of air pollution pursuant to the federal Clean Air Act. This section may not be interpreted to delay or otherwise affect adoption, implementation, or enforcement of any measure that was adopted, or included in a rulemaking calendar or air quality implementation plan that was adopted, by the district prior to January 1, 2004.

SEC. 220. Section 41514.1 of the Health and Safety Code is amended to read:

*41514.1.* (a) A health facility shall use the most recent standard set by the Joint Commission on the Accreditation of Healthcare Organizations for testing diesel backup generators. During each week that a diesel backup generator is not tested, the generator shall be started at least once, with or without load, for a period of time that allows the coolant temperature to stabilize.

(b) A health facility shall submit all data collected under this section to the State Department of Health Services when requested by the department.

(c) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

(d) For the purposes of this section, “health facility” has the same meaning as Section 1250, but includes only those facilities described in ~~subdivisions~~ *subdivision* (a), (b), (c), (d), (f), (g), or (k) of that section.

(e) Nothing in this section affects the authority of the State Air Resources Board or an air quality management district or air

1 pollution control district to regulate diesel backup generators  
2 owned by a health facility.

3 SEC. 221. Section 41855.6 of the Health and Safety Code is  
4 amended to read:

5 41855.6. The district may postpone the commencement dates  
6 set forth in subdivision (a) of Section 41855.5 for any category of  
7 agricultural waste or crop described if all of the following applies:

8 (a) The district determines that there is no economically  
9 feasible alternative means of eliminating the waste.

10 (b) The district determines that there is no long-term federal or  
11 state funding commitment for the continued operation of biomass  
12 facilities in the San Joaquin Valley or development of alternatives  
13 to burning.

14 (c) The district determines that the continued issuance of  
15 permits for that specific category or crop will not cause, or  
16 substantially contribute to, a violation of an applicable federal  
17 ambient air quality standard.

18 (d) The ~~State Air Resources Board~~ *state board* concurs with the  
19 district's determinations pursuant to this section.

20 SEC. 222. Section 50517.9 of the Health and Safety Code is  
21 amended to read:

22 50517.9. (a) In enacting this section, it is the intent of the  
23 Legislature to provide disaster assistance for farmworkers  
24 displaced by the 1997 floods in the most expeditious and fiscally  
25 sound manner possible. It is the intent of the Legislature that the  
26 Department of Housing and Community Development administer  
27 this section *in* accordance with those goals.

28 (b) In counties in which a disaster has been declared by the  
29 Governor pursuant to Section 8625 of the Government Code, and  
30 for a period of 12 months after the declaration, the department may  
31 award funds for the purposes of this section, subject to the  
32 following terms and conditions:

33 (1) Loans may be made to local public entities, nonprofit  
34 corporations, and private property owners to repair, rehabilitate,  
35 or replace housing previously used exclusively by migrant  
36 farmworker households or unaccompanied migrant farmworker  
37 adults, which will be used in the future for those purposes. Loan  
38 funds may be used to acquire or lease "~~manufactured structures~~"  
39 *structures,*" which, for the purposes of this section, means  
40 structures subject to Part 2 (commencing with Section 18000) of



1 Division 13. Private property owners shall be eligible for loans  
2 only to the extent that other federal and state resources, private  
3 insurance proceeds, or private institutional lending sources are not  
4 available in a timely manner or do not provide the coverage needed  
5 to rehabilitate or reconstruct the housing without increasing the  
6 rent above that charged for the units prior to the disaster.

7 (2) The department may enter into contracts directly with  
8 nonprofit corporations, local public entities, or private property  
9 owners to carry out the activities authorized by this section.

10 (3) Loans made under this section shall be secured by, and  
11 subject to, security instruments approved by the department,  
12 including, but not limited to, real property leases or liens,  
13 regulatory agreements, and liens on manufactured structures. The  
14 department shall establish loan terms and conditions with  
15 consideration to the financial feasibility and prudent operation of  
16 the housing units financed. In no event shall the loans require  
17 interest at a rate higher than ~~three percent~~ *3-percent* simple interest  
18 or have a term longer than the useful life of the housing units.  
19 Repayments may be deferred for the first five years of the loan  
20 term, if the department determines that it is necessary for fiscal  
21 integrity or to prevent foreclosure.

22 (4) In making any loan, the department shall require that the  
23 borrower meet all of the following conditions:

24 (A) The borrower shall be capable of providing occupancy in  
25 decent, safe, and sanitary housing that meets all of the  
26 requirements of law within six months after the award of funds.

27 (B) The borrower shall demonstrate the financial feasibility of  
28 the project.

29 (C) Prior to disbursement of funds, the borrower shall identify  
30 the property on which the housing will be repaired, rehabilitated,  
31 or replaced, and provide information satisfactory to the  
32 department related to the costs and sources of funding necessary  
33 to complete the repairs, rehabilitation, or replacement. All costs  
34 shall be reasonable, considering the necessity of expeditious  
35 rehabilitation or replacement.

36 (5) Priority for use of the funds shall be given to borrowers who  
37 will provide housing at the earliest date.

38 (6) All units assisted under this section shall remain affordable  
39 to low- and very low income households for the life of the project.  
40 For the 1997–98 growing season, farmworkers who previously

1 occupied the damaged or destroyed housing shall have first  
2 priority to occupy any unit assisted under this section.

3 (7) If units assisted under this section are built or rehabilitated  
4 in the same natural disaster zone as the units damaged or destroyed  
5 by the disaster, the borrower shall maintain disaster insurance on  
6 the units for the useful life of the units. For purposes of this section,  
7 “disaster insurance” means fire, earthquake, flood, or other  
8 insurance against the natural disaster that damaged or destroyed  
9 the housing units.

10 (8) To the extent that any housing unit that was damaged or  
11 destroyed is reconstructed under this section with substantially the  
12 same number of units, it shall be deemed to be “existing housing”  
13 for the purposes of subdivision (d) of Section 37001.5.

14 (9) The department may waive any requirements of Section  
15 50517.5 and any regulations promulgated thereunder ~~which~~ *that*  
16 are inconsistent with prompt and effective implementation of the  
17 program described in this section. In addition, any rule, policy, or  
18 standard of general application employed by the department in  
19 implementing the provision of this section shall not be subject to  
20 the requirements of Chapter 3.5 (commencing with Section  
21 11340) of Part 12 of Division 3 of Title 2 of the Government Code.  
22 Awards of funds made pursuant to this section shall not be  
23 subjected to review or approval by the Local Assistance Loan and  
24 Grant Committee of the department operating pursuant to  
25 Subchapter 1 (commencing with Section 6900) of Chapter 6.5 of  
26 Title 25 of the California Code of Regulations.

27 SEC. 223. Section 51615 of the Health and Safety Code is  
28 amended to read:

29 51615. (a) Chapter 3.5 (commencing with Section 6250) of  
30 Division 7 of Title 1 of ~~of~~, and Article 9 (commencing with Section  
31 11120) of Chapter 1 of, Chapter 3.5 (commencing with Section  
32 11340) of, Chapter 4 (commencing with Section 11370) of, and  
33 Chapter 5 (commencing with Section 11500) of, Part 1 of Division  
34 3 of Title 2 of ~~of~~, the Government Code shall apply to the agency  
35 with respect to the administration of the insurance fund.

36 (b) Notwithstanding subdivision (a), the provisions described  
37 in that subdivision shall not apply to any of the following:

38 (1) The agency’s activities and records relating to establishing  
39 rates and premiums.

1 (2) Bids or contracts for insurance, coinsurance, and  
2 reinsurance.

3 (3) Other matters necessary to maintain the competitiveness of  
4 the agency in the mortgage insurance industry, including, but not  
5 limited to, the development of financial products.

6 SEC. 224. Section 53533 of the Health and Safety Code is  
7 amended to read:

8 53533. (a) ~~Money~~ *Moneys* deposited in the fund from the sale  
9 of bonds pursuant to this part shall be allocated for expenditure in  
10 accordance with the following schedule:

11 (1) Nine hundred ten million dollars (\$910,000,000) shall be  
12 transferred to the Housing Rehabilitation Loan Fund to be  
13 expended for the Multifamily Housing Program authorized by  
14 Chapter 6.7 (commencing with Section 50675) of Part 2, except  
15 for the following:

16 (A) Fifty million dollars (\$50,000,000) shall be transferred to  
17 the Preservation Opportunity Fund and, notwithstanding Section  
18 13340 of the Government Code, is continuously appropriated  
19 without regard to fiscal years for the preservation of at-risk  
20 housing pursuant to Chapter 5 (commencing with Section 50600)  
21 of Part 2.

22 (B) Twenty million dollars (\$20,000,000) shall be used for  
23 nonresidential space for supportive services, including, but not  
24 limited to, job training, health services, and child care within, or  
25 immediately proximate to, projects to be funded under the  
26 Multifamily Housing Program. This funding shall be in addition  
27 to any applicable per-unit or project loan limits and may be in the  
28 form of a grant. Service providers shall ensure that services are  
29 available to project residents on a priority basis over the general  
30 public.

31 (C) Twenty-five million dollars (\$25,000,000) shall be used for  
32 matching grants to local housing trust funds pursuant to Section  
33 50843.

34 (D) Fifteen million dollars (\$15,000,000) shall be used for  
35 student housing through the Multifamily Housing Program,  
36 subject to the following provisions:

37 (i) The department shall give first priority for projects on land  
38 owned by a University of California or California State University  
39 campus. Second priority shall be given to projects located within  
40 one mile of a University of California or California State

1 University campus that is suffering from a severe shortage of  
2 housing and limited availability of developable land as determined  
3 by the department. Those determinations shall be set forth in the  
4 Notice of Funding Availability and shall not be subject to the  
5 requirements of Chapter 3.5 (commencing with Section 11340) of  
6 Part 1 of Title 2 of the Government Code.

7 (ii) All funds shall be matched on a one-to-one basis from  
8 private sources or by the University of California or California  
9 State University. For the purposes of this subparagraph,  
10 “University of California” includes the Hastings College of the  
11 Law.

12 (iii) Occupancy for the units shall be restricted to students  
13 enrolled on a full-time basis in the University of California or  
14 California State University.

15 (iv) Income eligibility pursuant to the Multifamily Housing  
16 Program shall be established by verification of the combined  
17 income of the student and his or her family.

18 (v) Any funds not used for this purpose within 24 months of the  
19 date that the funds are made available shall be awarded pursuant  
20 to subdivision (a) for the Downtown Rebound Program as set forth  
21 in paragraph (1) of subdivision (c) of Section 50898.2.

22 (E) Any funds not encumbered for the purposes set forth in this  
23 paragraph, except subparagraph (D), within 30 months of  
24 availability shall revert to the Housing Rehabilitation Loan Fund  
25 created by Section 50661 for general use in the Multifamily  
26 Housing Program.

27 (2) One hundred ninety-five million dollars (\$195,000,000)  
28 shall be transferred to the Emergency Housing and Assistance  
29 Fund to be expended for the Emergency Housing and Assistance  
30 Program authorized by Chapter 11.5 (commencing with Section  
31 ~~50800~~ 50800) of Part 2.) 2.

32 (3) One hundred ninety-five million dollars (\$195,000,000)  
33 shall be transferred to the Housing Rehabilitation Loan Fund to be  
34 expended for supportive housing projects under the Multifamily  
35 Housing Program authorized by Chapter 6.7 (commencing with  
36 Section 50675) of Part 2, to serve individuals and households  
37 moving from emergency shelters or transitional housing or those  
38 at risk of homelessness.

39 (4) Two hundred million dollars (\$200,000,000) shall be  
40 transferred to the Joe Serna, Jr. Farmworker Housing Grant Fund

1 to be expended for farmworker housing programs authorized by  
2 Chapter 3.2 (commencing with Section 50517.5) of Part 2, except  
3 for the following:

4 (A) Twenty-five million dollars (\$25,000,000) shall be used  
5 for projects that serve migratory agricultural workers as defined in  
6 subdivision (i) of Section 7602 of Title 25 of the California Code  
7 of Regulations. If, after July 1, 2003, funds remain after the  
8 approval of all feasible applications, the department shall be  
9 deemed an eligible recipient for the purposes of reconstructing  
10 migrant centers operated through the Office of Migrant Services  
11 pursuant to Chapter 8.5 (commencing with Section 50710) that  
12 would otherwise be scheduled for closure due to health or safety  
13 considerations or are in need of significant repairs to ensure the  
14 health and safety of the residents. Of the dollars allocated by this  
15 section, the department shall receive four million one hundred  
16 thousand dollars (\$4,100,000) for these purposes.

17 (B) Twenty million dollars (\$20,000,000) shall be used for  
18 developments that also provide health services to the residents.  
19 Recipients of these funds shall be required to provide ongoing  
20 monitoring of funded developments to ensure compliance with the  
21 requirements of the Joe Serna, Jr. Farmworker Housing Grant  
22 Program. Projects receiving funds through this allocation shall be  
23 ineligible for funding through the Joe Serna, Jr. Farmworker  
24 Housing Grant Program.

25 (C) Any funds not encumbered for the purposes set forth in this  
26 paragraph within 30 months of availability shall revert for general  
27 use in the Joe Serna, Jr. Farmworker Housing Grant Program.

28 (5) Two hundred five million dollars (\$205,000,000) shall be  
29 transferred to the Self-Help Housing Fund. Notwithstanding  
30 Section 13340 of the Government Code and Section 50697.1,  
31 these funds are hereby continuously appropriated without regard  
32 to fiscal years to the department to be expended for the purposes  
33 of the CalHome Program authorized by Chapter 6 (commencing  
34 with Section 50650) of Part 2, except for the following:

35 (A) Seventy-five million dollars (\$75,000,000) shall be  
36 transferred to the Building Equity and Growth in Neighborhoods  
37 Fund to be used for the Building Equity and Growth in  
38 Neighborhoods (BEGIN) Program pursuant to Chapter 4.5  
39 (commencing with Section 50860) of Part 1.

1 (B) Five million dollars (\$5,000,000) shall be used to provide  
2 grants to cities, counties, cities and counties, and nonprofit  
3 organizations to provide grants for ~~lower-income~~ *lower-income*  
4 tenants with disabilities for the purpose of making exterior  
5 modifications to rental housing in order to make that housing  
6 accessible to persons with disabilities. For the purposes of this  
7 subparagraph, “exterior modifications” includes modifications  
8 that are made to entryways or to common areas of the structure or  
9 property. The program provided for under this subparagraph shall  
10 not be subject to the requirements of Chapter 3.5 (commencing  
11 with Section 11340) of Part 1 of Title 2 of the Government Code.

12 (C) Ten million dollars (\$10,000,000) shall be expended for  
13 construction management under the California Self-Help Housing  
14 Program pursuant to subdivision (b) of Section 50696.

15 (D) Any funds not encumbered for the purposes set forth in this  
16 paragraph within 30 months of availability shall revert for general  
17 use in the CalHome Program.

18 (6) Five million dollars (\$5,000,000) shall be transferred to the  
19 Housing Rehabilitation Loan Fund to be expended for capital  
20 expenditures in support of local code enforcement and compliance  
21 programs. This allocation shall not be subject to the requirements  
22 of Chapter 3.5 (commencing with Section 11340) of Part 1 of Title  
23 2 of the Government Code. If the moneys allocated pursuant to this  
24 paragraph are not expended within three years after being  
25 transferred, the department may, in its discretion, transfer the  
26 moneys to the Housing Rehabilitation Loan Fund to be expended  
27 for the Multifamily Housing Program.

28 (7) Two hundred ninety million dollars (\$290,000,000) shall be  
29 transferred to the Self-Help Housing Fund. Notwithstanding  
30 Section 50697.1, these funds are hereby continuously  
31 appropriated to the agency to be expended for the purposes of the  
32 California Homebuyer’s Downpayment Assistance Program  
33 authorized by Chapter 11 (commencing with Section 51500) of  
34 Part 3, except for the following:

35 (A) Fifty million dollars (\$50,000,000) shall be transferred to  
36 the School Facilities Fee Assistance Fund as provided by  
37 subdivision (a) of Section 51453 to be used for the Homebuyer  
38 Down Payment Assistance Program of 2002 established by  
39 Section 51451.5.



(B) Eighty-five million dollars (\$85,000,000) shall be transferred to the California Housing Loan Insurance Fund to be used for purposes of Part 4 (commencing with Section 51600). The agency may transfer these moneys as often as quarterly in amounts that shall not exceed the dollar amount of new insurance written by the agency during the preceding quarter for loans for the purchase of homes made to owner-occupant borrowers with incomes not exceeding 120 percent of the area median income, divided by the risk-to-capital ratio required for the maintenance of satisfactory credit ratings from nationally recognized credit rating services.

(C) (i) Twelve million five hundred thousand dollars (\$12,500,000) shall be reserved for downpayment assistance to low-income first-time home buyers who, as documented to the agency by a nonprofit organization certified and funded to provide home ownership counseling by a federally funded national nonprofit corporation, are purchasing a residence in a community revitalization area targeted by the nonprofit organization and who has received home ownership counseling from the nonprofit organization. Community revitalization areas shall be limited to targeted neighborhoods identified by qualified nonprofit organizations as those neighborhoods in need of economic stimulation, renovation, and rehabilitation through efforts that include increased home ownership opportunities for low-income families.

(ii) Effective January 1, 2004, 50 percent of the funds available pursuant to clause (i) shall be available for downpayment assistance in an amount not to exceed 6 percent of the home sales price.

(iii) After 12 months of availability, if more than 50 percent of the funds set aside pursuant to clause (ii) have been encumbered, the agency shall discontinue that program and make all remaining funds available for downpayment assistance pursuant to clause (i). If, however, less than 50 percent of the funds allocated pursuant to clause (ii) are encumbered after that 12-month period, the agency may, at its sole discretion, either make all remaining funds provided pursuant to clause (i) available for the purpose of clause (ii), or may continue to implement clause (ii) until all of the funds allocated for that purpose as of January 1, 2004, have been encumbered.



(D) Twenty-five million dollars (\$25,000,000) shall be used for downpayment assistance pursuant to Section 51505. After 18 months of availability, if the agency determines that the funds set aside pursuant to this section will not be utilized for purposes of Section 51505, these funds shall be available for the general use of the agency for the purposes of the California Homebuyer's Downpayment Assistance Program, but may also continue to be available for the purposes of Section 51505.

(E) Funds not utilized for the purposes set forth in subparagraphs (B) and (C) within 30 months shall revert for general use in the California Homebuyer's Downpayment Assistance Program.

(8) One hundred million dollars (\$100,000,000) shall be transferred to the Jobs Housing Improvement Account to be expended as capital grants to local governments for increasing housing pursuant to enabling legislation. If the enabling legislation fails to become law in the 2001–02 Regular Session of the Legislature, the specified allocation for this program shall be void and the funds shall revert for general use in the Multifamily Housing Program as specified in paragraph (1) of subdivision (a).

(b) No portion of the money allocated pursuant to this section may be expended for project operating costs, except that this section does not preclude expenditures for operating costs from reserves required to be maintained by or on behalf of the project sponsor.

(c) The Legislature may, from time to time, amend the provisions of law related to programs to which funds are, or have been, allocated pursuant to this section for the purpose of improving the efficiency and effectiveness of the program, or for the purpose of furthering the goals of the program.

(d) The Bureau of State Audits shall conduct periodic audits to ensure that bond proceeds are awarded in a timely fashion and in a manner consistent with the requirements of this part, and that awardees of bond proceeds are using funds in compliance with applicable provisions of this part.

SEC. 225. Section 101625 of the Health and Safety Code is amended to read:

101625. The authority is hereby declared to be a body corporate and politic and shall have power:

(a) To have perpetual succession.

1 (b) To sue and be sued in the name of the authority in all actions  
2 and proceedings in all courts and tribunals of competent  
3 jurisdiction.

4 (c) To adopt a seal and alter it at pleasure.

5 (d) To take by grant, purchase, gift, devise, or lease, to hold,  
6 use, and enjoy, and to lease, convey, or dispose of, real and  
7 personal property of every kind, within or without the boundaries  
8 of the authority, necessary or convenient to the full exercise of its  
9 powers. The board may lease, mortgage, sell, or otherwise dispose  
10 of any real or personal property within or without the boundaries  
11 of the authority necessary to the full or convenient exercise of its  
12 powers.

13 (e) To make and enter into contracts with any public agency or  
14 person for the purposes of this chapter.

15 (f) To appoint and employ an executive director and other  
16 employees as may be necessary, including legal counsel, establish  
17 their compensation, and define their powers and duties. The board  
18 shall prescribe the amounts and forms of fidelity bond of its  
19 officers and employees. The cost of these bonds shall be borne by  
20 the authority. The employees and each of them shall serve at the  
21 pleasure of the board. The authority may also contract for the  
22 services of an independent contractor.

23 (g) To incur indebtedness.

24 (h) To purchase supplies, equipment, materials, property, or  
25 services.

26 (i) To establish policies relating to its purposes.

27 (j) To acquire or contract to acquire, rights-of-way, easements,  
28 privileges, or property of every kind within or without the  
29 boundaries of the authority, and construct, equip, maintain, and  
30 operate any and all works or improvements within or without the  
31 boundaries of the authority necessary, convenient, or proper to  
32 carry out any of the provisions, objects, or purposes of this chapter,  
33 and to complete, extend, add to, repair, or otherwise improve any  
34 works or improvements acquired by it.

35 (k) To make contracts and enter into stipulations of any nature  
36 upon the terms and conditions that the board finds are for the best  
37 interest of the authority for the full exercise of the powers granted  
38 in this chapter.

39 (l) To accept gifts, contributions, grants, or loans from any  
40 public agency or person for the purposes of this chapter.

1 The authority may do any and all things necessary in order to  
2 avail itself of gifts, contributions, grants, or loans, and cooperate  
3 under any federal or state legislation in effect on January 25, 1982,  
4 or enacted after that date.

5 (m) To invest any surplus money in its treasury in the same  
6 manner as the County of Monterey and according to the same laws.

7 (n) To negotiate with service providers rates, charges, fees, and  
8 rents, and to establish classifications of health care systems  
9 operated by the authority.

10 (o) To develop and implement health care delivery systems to  
11 promote quality care and cost efficiency.

12 (p) To provide health care delivery systems for any or all of the  
13 following:

14 (1) For all persons who are eligible to receive medical benefits  
15 under the Medi-Cal Act (Chapter 7 (commencing with ~~See~~  
16 *Section 14000*); of Part 3; of Division 9; of the Welfare and  
17 Institutions Code) in Monterey County through waiver, pilot  
18 project, or otherwise.

19 (2) For all persons in Monterey County who are eligible to  
20 receive medical benefits under both Titles XVIII and XIX of the  
21 Social Security Act.

22 (3) For all persons from Monterey County or any city in that  
23 county who are eligible to receive health care under Parts 4.5  
24 (commencing with Section 16700) and 5 (commencing with  
25 Section 17000) of Division 9 of the Welfare and Institutions Code.

26 (q) To insure against any accident or destruction of its health  
27 care system or any part thereof. It may insure against loss of  
28 revenues from any cause. The district may also provide insurance  
29 as provided in Part 6 (commencing with Section 989) of Division  
30 3.6 of Title 1 of the Government Code.

31 (r) To exercise powers that are expressly granted and powers  
32 that are reasonably implied from those express powers and  
33 necessary to carry out the purposes of this chapter.

34 (s) To do any and all things necessary to carry out the purposes  
35 of former Division 1 (commencing with Section 1).

36 SEC. 226. Section 104558 of the Health and Safety Code is  
37 amended to read:

38 104558. (a) In order to secure and protect the moneys to be  
39 received as a result of the Master Settlement Agreement, as  
40 defined in subdivision (e) of Section 104556, in civil litigation

1 under any legal theory involving a signatory, successor of a  
2 signatory, or an affiliate of a signatory to the Master Settlement  
3 Agreement that has not been brought to trial as of the effective date  
4 of this section, the amount of the required undertaking, bond, or  
5 equivalent surety to be furnished during the pendency of an appeal  
6 or any discretionary appellate review of any judgment granting  
7 legal, equitable, or any other form of relief in order to stay the  
8 execution thereon during the entire course of the appellate review  
9 shall be set in accordance with applicable laws and rules of the  
10 court, except that the total undertaking, bond, or equivalent surety  
11 that is required per case, whether individual, aggregate, or  
12 otherwise, of all appellants, collectively, may not exceed 100  
13 percent of the verdict or one hundred fifty million dollars  
14 (\$150,000,000) whichever is ~~lesser~~ *less*, regardless of the value of  
15 the judgment.

16 (b) Nothing in this section or any other provision of law shall  
17 be construed to eliminate the discretion of the court, for good cause  
18 shown, to set the undertaking or bond on appeal in an amount  
19 lower than that otherwise established by law.

20 (c) If the appellee proves by a preponderance of the evidence  
21 that a party bringing an appeal or seeking a stay of execution of  
22 judgment and for whom the undertaking has been limited under  
23 this section, is intentionally dissipating or diverting assets outside  
24 the ordinary course of its business for the purpose of avoiding  
25 ultimate payment of the judgment, any limitation under  
26 subdivision (a) may be rescinded and the court may order any  
27 actions necessary to prevent dissipation or diversion of the assets.

28 SEC. 227. Section 106010 of the Health and Safety Code is  
29 amended to read:

30 106010. (a) The clinical centers described in Section 106000  
31 shall include the Stroke and Hypertension Center, the Obesity and  
32 Nutrition Center, and the HIV/AIDS Center.

33 (b) The centers shall target and address illnesses that are related  
34 biologically and clinically and are characterized by outcomes that  
35 are disparate between minority populations and that of the overall  
36 community.

37 (c) The centers shall initially focus on health promotion,  
38 disease prevention, health risk assessment, and health screening  
39 services in connection with target medical conditions in minority  
40 populations that are experiencing disparate outcomes in relation to

1 the overall community in regard to target conditions. However,  
2 ~~overtime~~ *over time*, each center shall develop a portfolio of  
3 projects that also address these target conditions in all racial,  
4 ethnic, and cultural groups.

5 SEC. 228. Section 115005 of the Health and Safety Code is  
6 amended to read:

7 115005. In addition to the requirements imposed by Section  
8 115000, the department shall develop an overall plan, in  
9 consultation with other state, regional, and federal agencies, for  
10 the management, treatment, and disposal of low-level radioactive  
11 waste generated within California. The plan shall contain, at a  
12 minimum, all of the following elements:

13 (a) Specific contingency plans to address the needs of the state  
14 for the short-term storage of low-level radioactive waste in the  
15 event of a precipitous closure of existing out-of-state commercial  
16 waste disposal facilities and to evaluate feasible alternatives for  
17 meeting the state's needs. This element of the plan shall include,  
18 but is not limited to, all of the following factors:

19 (1) The amount and kinds of low-level radioactive waste  
20 generated by California licensees and current disposal locations.

21 (2) The size and nature of an interim storage facility required  
22 to meet California's interim low-level radioactive waste disposal  
23 needs.

24 (3) The cost of developing and operating an interim storage site  
25 by the department or contracting organizations.

26 (4) Criteria for the siting of an interim storage site, including,  
27 but not limited to, all of the following:

28 (A) Proximity to population.

29 (B) Geologic stability.

30 (C) Proximity to ground or surface water.

31 (D) Availability of transportation.

32 (E) General public health and economic considerations.

33 This element of the plan shall be completed and submitted to the  
34 appropriate committees of each house of the Legislature on or  
35 before December 31, 1982.

36 (b) A classification scheme for the separation of low-level  
37 waste that will facilitate the management, treatment, storage, and  
38 ultimate disposal of the waste. This classification scheme shall  
39 consider the matters as possible de ~~minimus~~ *minimis* radiation  
40 levels for specific radionuclides, the quantity and specific activity

1 of the material, its persistence, toxicity, chemical form, reactivity,  
2 and the principal radionuclides present. The classification scheme  
3 shall also include the specifications necessary to determine which  
4 classes of waste may or may not be accepted for storage in an  
5 interim storage facility ~~established~~ *established* pursuant to Section  
6 115045, that may or may not be held by the licensee for decay to  
7 specified residual radioactivity levels and that require long-term  
8 isolation from the environment, as the case may be, for the  
9 protection of the public health and safety. The department may  
10 require as a condition of licensure the submission of information  
11 necessary to determine the total amount of waste produced in each  
12 class of the classification scheme. The department may, by  
13 regulation, adopt the classification scheme establishing which  
14 wastes may or may not be accepted at an interim storage facility  
15 or at a treatment or disposal facility.

16 This element of the plan shall be completed and submitted to the  
17 appropriate committees of each house of the Legislature on or  
18 before December 31, 1982.

19 (c) Siting criteria for potential land burial disposal sites and  
20 treatment facilities within the state. In establishing these criteria,  
21 the department shall consider the following factors, including, but  
22 not limited to:

23 (1) The present and projected future uses of land, water, and  
24 natural resources.

25 (2) The proximity of the site to major population centers.

26 (3) The presence of active earthquake faults.

27 (4) Geologic and other natural barriers ~~which~~ *that* protect  
28 against surface or groundwater contamination.

29 (5) The effectiveness of engineered barriers, waste treatment,  
30 and waste packaging in ensuring isolation of the waste from the  
31 environment.

32 (6) Transportation of radioactive materials as it relates to  
33 public health and safety.

34 (7) The relative economic impact of location and operation of  
35 treatment or disposal facilities.

36 This element of the plan shall be completed and submitted to the  
37 appropriate committees of each house of the Legislature on or  
38 before December 31, 1982.

39 (d) A plan of action to minimize the environmental,  
40 occupational, and public health impact of low-level radioactive

1 waste and to protect the public health and safety by encouraging  
2 a reduction in the amount and toxicity of waste produced. This  
3 activity shall include conducting or having studies conducted that  
4 evaluate the technical and economic feasibility of (1) reducing the  
5 volume, reactivity, and chemical and radioactive hazard of the  
6 waste, (2) cleaning contaminated, nonactivated metals and other  
7 materials to permit their recycle and reuse, and (3) substituting  
8 nonradioactive or short-lived radioactive materials for those  
9 radionuclides that require long-term isolation from the  
10 environment. The results of these studies, along with the  
11 departmental recommendations for their implementation, shall be  
12 reported by the department to the appropriate committees of the  
13 Legislature on or before December 31, 1983.

14 (e) Within six months after September 28, 1983, the Governor  
15 shall direct the appropriate state agency or agencies, as determined  
16 by the Governor, to conduct and complete a study that identifies  
17 those regions of the state within which it is likely the criteria  
18 developed pursuant to subdivision (c) could be met. The state  
19 agency or agencies, so directed, may also request, when  
20 appropriate, the assistance of state or federal agencies or private  
21 organizations.

22 SEC. 229. Section 121010 of the Health and Safety Code is  
23 amended to read:

24 121010. Notwithstanding Section 120975 or 120980, the  
25 results of a blood test to detect antibodies to the probable causative  
26 agent of AIDS may be disclosed to any of the following persons  
27 without written authorization of the subject of the test:

28 (a) To the subject of the test or the subject's legal  
29 representative, conservator, or to any person authorized to consent  
30 to the test pursuant to subdivision (b) of Section 120990.

31 (b) To a test subject's provider of health care, as defined in  
32 subdivision (d) of Section 56.05 of the Civil Code, except that for  
33 purposes of this section, "provider of health care" does not  
34 include a health care service plan regulated pursuant to Chapter 2.2  
35 (commencing with Section 1340) of Division 2.

36 (c) To an agent or employee of the test subject's provider of  
37 health care who provides direct patient care and treatment.

38 (d) To a provider of health care who procures, processes,  
39 distributes, or uses a human body part donated pursuant to the





1 Uniform Anatomical Gift Act (Chapter 3.5 (commencing with  
2 Section 7150) of Part 1 of Division 7).

3 (e) (1) To the designated officer of an emergency response  
4 employee, and from that designated officer to an emergency  
5 response employee regarding possible exposure to HIV or AIDS,  
6 but only to the extent necessary to comply with provisions of the  
7 Ryan White Comprehensive AIDS Resources Emergency Act of  
8 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

9 (2) For purposes of this subdivision, “designated officer” and  
10 “emergency response employee” ~~has~~ *have* the same meaning as  
11 these terms are used in the Ryan White Comprehensive AIDS  
12 Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec.  
13 201).

14 (3) The designated officer shall be subject to the confidentiality  
15 requirements specified in Section 120980, and may be personally  
16 liable for unauthorized release of any identifying information  
17 about the HIV results. Further, the designated officer shall inform  
18 the exposed emergency response employee that the employee is  
19 also subject to the confidentiality requirements specified in  
20 Section 120980, and may be personally liable for unauthorized  
21 release of any identifying information about the HIV test results.

22 SEC. 230. The heading of Chapter 8 (commencing with  
23 Section 127670) of Part 2 of Division 107 of the Health and Safety  
24 Code is amended to read:

25  
26 CHAPTER 8. CALIFORNIA HEALTH CARE QUALITY *IMPROVEMENT*  
27 *AND* COST CONTAINMENT COMMISSION  
28

29 SEC. 231. Section 127670 of the Health and Safety Code is  
30 amended to read:

31 127670. The Legislature finds and declares the following:

32 (a) California’s health care system needs to be reformed to  
33 provide high quality accessible, affordable, and equitable care and  
34 treatment.

35 (b) Too many Californians are unable to obtain affordable, high  
36 quality health care.

37 (c) The rising costs associated with health care are driven by  
38 numerous factors, including, but not limited to, the following:

39 (1) Prescription drug spending, including costs of research and  
40 development and marketing and increased drug utilization.

- 1 (2) Hospital rates.
- 2 (3) Health insurance premium rates.
- 3 (4) Provider rates.
- 4 (5) Health system inefficiencies.
- 5 (6) Fraud and abuse in the health care system.
- 6 (7) Technology development and utilization.
- 7 (8) Emergency room overutilization.
- 8 (9) Inequitable allocation of services and treatment to different
- 9 segments of the population.
- 10 (10) Cost shifting, which occurs when the costs of providing
- 11 uncompensated health care to uninsured individuals is shifted to
- 12 those with health insurance, driving health care prices and
- 13 insurance premiums higher.
- 14 (d) Health care cost containment is an important part of
- 15 enabling the health care coverage system to provide high quality
- 16 care in a manner that improves patient outcomes.
- 17 (e) Evidence-based medicine may improve cost-effectiveness
- 18 and care to patients by using scientific evidence to determine
- 19 clinical practice, drug therapy, and other measures that improve
- 20 the quality of care in a cost-effective manner while taking into
- 21 account the special needs of individual patients. To improve
- 22 quality as well as cost-effectiveness, evidence-based medicine
- 23 should take into account the special needs of persons with
- 24 disabilities as well as the racial, ethnic, and gender disparities in
- 25 health research and the provision of health care.
- 26 (f) Chronic diseases, such as heart disease, stroke, asthma,
- 27 cancer, and diabetes, are among the most prevalent, costly, and
- 28 preventable of all health problems. Seventy-eight percent of health
- 29 care costs can be attributed to the treatment of chronic conditions.
- 30 “Disease management” provides a strategy to improve patient
- 31 health outcomes and limit health care spending by identifying and
- 32 monitoring high-risk populations, helping patients and providers
- 33 better adhere to proven interventions, engaging patients in their
- 34 own care management, and establishing more coordinated care
- 35 interventions and follow-up systems to prevent unnecessary and
- 36 expensive health complications. These disease management
- 37 strategies should be tailored to fit the needs of each patient.
- 38 Disease management is most effective when it takes into account
- 39 racial, ethnic, and gender disparities in health research and the
- 40 provision of health care.



1 (g) Without reform, California’s health care system may fail to  
2 deliver the affordable quality care that all Californians deserve.

3 (h) It is the intent of the Legislature to make available valid  
4 performance information to encourage hospitals and physicians to  
5 provide care that is safe, medically effective, patient-centered,  
6 timely, efficient, and equitable. It is also the intent of the  
7 Legislature to strengthen the ability of the Office of Statewide  
8 Health Planning and Development to put hospital performance  
9 information into the hands of consumers, purchasers, and  
10 providers.

11 (i) It is the intent of the Legislature to encourage health care  
12 service plans, health insurers, and providers to develop innovative  
13 approaches, services, and programs that may have the potential to  
14 deliver health care that is both cost-effective and responsive to the  
15 needs of enrollees.

16 SEC. 232. Section 127671 of the Health and Safety Code is  
17 amended to read:

18 127671. (a) The Governor shall convene the California  
19 Health Care Quality Improvement and Cost Containment  
20 Commission, hereinafter referred to as “the commission,” to  
21 research and recommend appropriate and timely strategies for  
22 promoting high quality care and containing health care costs.

23 (b) The commission shall be composed of 27 members who are  
24 knowledgeable about the health care system and health care  
25 spending.

26 (c) The Governor shall appoint 17 members of the commission,  
27 as follows:

28 (1) Three representatives of California’s business community,  
29 including at least one representative from a small business.

30 (2) Two representatives from organized labor, one of whom  
31 represents health care workers.

32 (3) Two representatives of consumers.

33 (4) Two health care practitioners, including at least one  
34 physician.

35 (5) One representative of the disabilities community.

36 (6) One hospital industry representative.

37 (7) One pharmaceutical industry representative.

38 (8) Two representatives of the health insurance industry, one  
39 with expertise in managed health care delivery systems and one  
40 with expertise in health insurance underwriting and rating.

1 (9) One representative of academic or health care policy  
2 research institutions.

3 (10) One health care economist.

4 (11) One expert in disease management techniques and  
5 wellness programs.

6 (d) The Senate Committee on Rules shall appoint four  
7 members, with two members from the majority party and two from  
8 the minority party.

9 (e) The Speaker of the Assembly shall appoint four members,  
10 of which two members shall be the Chair and Vice Chair of the  
11 Assembly Committee on Health.

12 (f) The Secretary of the Health and Human Services Agency  
13 and the Director of the Department of Managed Health Care shall  
14 serve as members of the commission.

15 (g) The Governor shall appoint the chairperson of the  
16 commission.

17 (h) The commission shall, on or before January 1, 2005, issue  
18 a report to the Legislature and the Governor making  
19 recommendations for health care quality improvement and cost  
20 containment. The commission shall, at a minimum, examine and  
21 address the following issues:

22 (1) Assessing California health care needs and available  
23 resources.

24 (2) Lowering the cost of health care coverage.

25 (3) Increasing patient choices of health coverage options and  
26 providers.

27 (4) Improving the quality of health care.

28 (5) Increasing the transparency of health care costs and the  
29 relative efficiency with which care is delivered.

30 (6) Potential for integration with workers' compensation  
31 insurance.

32 (7) Use of disease management, wellness, prevention, and  
33 other innovative programs to keep people healthy while reducing  
34 costs and improving health outcomes.

35 (8) Consolidation of existing state programs to achieve  
36 efficiencies where possible.

37 (9) Efficient utilization of prescription drugs and technology.

38 ~~(h)~~

1 (i) Notwithstanding any other provision of law, the members of  
2 the task force shall receive no per diem or travel expense  
3 reimbursement, or any other expense reimbursement.

4 SEC. 233. Section 127760 of the Health and Safety Code is  
5 amended to read:

6 127760. The Legislature finds and declares that:

7 (a) Planning for appropriate supplies and distribution of health  
8 care personnel is essential to assure the continued health and  
9 well-being of the people of the state and also to contain excess  
10 costs that may result from unnecessary training and ~~under~~  
11 ~~utilization~~ *underutilization* of health care personnel.

12 (b) The information on physicians and surgeons collected by  
13 the Medical Board of California, in cooperation with the office,  
14 and under the authority of Sections 921 and 923 of the Business  
15 and Professions Code, has proven to be valuable for health  
16 manpower planning purposes. It is the intent of the Legislature,  
17 through this article, to provide for the efficient collection and  
18 analysis of similar information on other major categories of  
19 healing arts licentiates, in order to facilitate the development of the  
20 biennial health manpower plan and other reports and program  
21 activities of the office.

22 (c) It is the intent of the Legislature that the data transmitted to  
23 the office by the various boards be processed by the boards so that  
24 licentiates are not identified by name or license number.

25 SEC. 234. Section 128401 of the Health and Safety Code is  
26 amended to read:

27 128401. (a) The Office of Statewide Health Planning and  
28 Development shall adopt regulations establishing the statewide  
29 Associate Degree Nursing (A.D.N.) Scholarship Pilot Program.

30 (b) Scholarships under the pilot program shall be available only  
31 to students in counties determined to have the most need. Need in  
32 a county shall be established based on consideration of all the  
33 following factors:

34 (1) Counties with a registered nurse to population ratio equal  
35 or less than 500 registered nurses per 100,000 individuals.

36 (2) County unemployment rate.

37 (3) County level of poverty.

38 (c) A scholarship recipient shall be required to complete, at a  
39 minimum, an associate degree in nursing and work in a medically

underserved area in California upon obtaining his or her license from the Board of Registered Nursing.

(d) The Health Professions Education Foundation shall consider the following factors when selecting recipients for the A.D.N. Scholarship Pilot Program:

(1) An applicant's economic need, as established by the federal poverty index.

(2) Applicants who demonstrate cultural and linguistic skills and abilities.

(e) The pilot program shall be funded from the Registered Nurse Education Fund established pursuant to Section 128400 and administered by the Health Professions Education Foundation within the office. The Health Professions Education Foundation shall allocate a portion of the moneys in the fund for the pilot program established pursuant to this section, in addition to moneys otherwise allocated pursuant to this article for scholarships and loans for associate degree ~~nurse~~ nursing students.

(f) No additional staff or General Fund operating costs shall be expended for the pilot program.

(g) The Health Professions Education Foundation may accept private or federal funds for purposes of the A.D.N. Scholarship Pilot Program.

(h) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 235. Section 881 of the Insurance Code is amended to read:

881. The commissioner shall require the name or any changed name of every insurer (including reciprocal or interinsurance exchanges), every attorney in fact, every motor club, and every underwritten title company to be submitted to him *or her* by written application and approved by him *or her* before ~~such~~ *the* name is used in this state for business purposes. If approved, the commissioner shall issue his *or her* official certificate approving the name, and when appropriate, reserving the name for the following time periods, which shall commence on the date of the approval:

(1) One year ~~where~~ *if* the applicant is newly formed, or ~~where~~ *if* the application is filed on behalf of an entity to be formed, under the laws of this state.

1 (2) One hundred eighty days and during the pendency in good  
2 faith of an application for certificate of authority in the case of a  
3 foreign or alien applicant.

4 (3) Ninety days in the case of an admitted entity requesting  
5 authority to change the name under which it will conduct its  
6 business with the public in this state.

7 Except in the case ~~where~~ *in which* an applicant has already paid  
8 a fee on a pending application for admission, the commissioner  
9 shall collect a fifty-eight dollar (\$58) fee for filing each application  
10 for name approval and reservation. An application for name  
11 approval may contain not more than three names in the order of  
12 applicant's preference and the commissioner's approval shall be  
13 limited to only one name submitted by any one application.

14 The certificate of approval shall be attached to the articles of  
15 incorporation before the Secretary of State shall file ~~such~~ *the*  
16 articles or any amended articles. The commissioner may reject any  
17 name ~~so~~ submitted when it is an interference with, or too similar  
18 to one already appropriated, or when it is likely to mislead the  
19 public in any respect. In the event of ~~such~~ a rejection, the applicant  
20 shall legally change its name to one approved by the commissioner  
21 or, if a foreign or alien insurer, may arrange to conduct any  
22 business it may do with the public in California under an approved  
23 name as an operating name, identifying itself under both its true  
24 name and operating name in the conduct of all official business  
25 with the commissioner.

26 Notwithstanding the provisions of Sections 1282 and 12221, the  
27 provisions of this section shall apply to reciprocal insurers,  
28 including their attorneys in fact, and shall apply to motor clubs,  
29 respectively.

30 SEC. 236. Section 1063.53 of the Insurance Code is amended  
31 to read:

32 1063.53. (a) In the event a natural disaster such as an  
33 earthquake or fire results in covered claim obligations currently  
34 payable and owed by the association in excess of its capacity to pay  
35 from current funds and current premium assessments allowable  
36 under Section 1063.5, and upon a declaration of emergency by the  
37 Governor or the President of the United States, the board, in its sole  
38 discretion, may by resolution request the department to issue  
39 bonds pursuant to this article to provide funds for the payment of  
40 covered claims and expenses related thereto. Should the bonds be



1 issued, the department shall have the authority to levy upon  
2 member insurers insurance assessments in the amount necessary  
3 to pay the principal of and interest on the bonds, and to meet other  
4 requirements established by agreements relating to the bonds. The  
5 department may enter into an agreement with CIGA for CIGA to  
6 act as agent for the department to collect the assessments.

7 The department may assume the obligation to pay the covered  
8 claims of insolvent insurers for the purpose of paying the claims  
9 with the proceeds of the bonds. The obligation of the department  
10 to pay claims shall be a limited obligation payable only ~~out~~ out of  
11 the proceeds of the bonds. The department shall enter into an  
12 agreement with CIGA for CIGA to act as agent of the department  
13 to adjust and administer the payment of the claims. Premium  
14 payments collected pursuant to this authority may only be used for  
15 servicing the bond obligations provided for in this section and may  
16 be pledged for that purpose. Premium assessments made pursuant  
17 to this section shall also be subject to the surcharge provisions in  
18 Sections 1063.14 and 1063.145.

19 (b) In addition to the premium assessments provided for in this  
20 section, the board in its discretion and subject to other obligations  
21 of the association, may utilize current funds of the association,  
22 premium assessments made under Section 1063.5, and advances  
23 or dividends received from the liquidators of insolvent insurers to  
24 pay the principal and interest on any bonds issued at the board's  
25 request.

26 SEC. 237. Section 1067.08 of the Insurance Code is amended  
27 to read:

28 1067.08. (a) For the purpose of providing the funds  
29 necessary to carry out the powers and duties of the association, the  
30 board of ~~director~~ *directors* shall assess the member insurers,  
31 separately for each account, at ~~such~~ the time and for ~~such~~ the  
32 amounts as the board finds necessary. Assessments shall be due not  
33 more than 30 days after prior written notice to the member insurers  
34 and shall accrue interest at the rate of 10 percent per annum on and  
35 after the due date.

36 (b) There shall be two assessments, as follows:

37 (1) Class A assessments shall be made for the purpose of  
38 meeting administrative and legal costs and other expenses and  
39 examinations conducted under the authority of subdivision (e) of

1 Section 1067.11. Class A assessments may be made whether or not  
2 related to a particular impaired or insolvent insurer.

3 (2) Class B assessments shall be made to the extent necessary  
4 to carry out the powers and duties of the association under Section  
5 1067.07 with regard to an impaired or an insolvent insurer.

6 (c) (1) The amount of any class A assessment shall be  
7 determined by the board and may be made on a pro rata or non-pro  
8 rata basis. If pro rata, the board may provide that it be credited  
9 against future class B assessments. A non-pro rata assessment shall  
10 not exceed two hundred fifty dollars (\$250) per member insurer in  
11 any one calendar year. The amount of any class B assessment shall  
12 be allocated for assessment purposes among the accounts pursuant  
13 to an allocation formula ~~which~~ *that* may be based on the premiums  
14 or reserves of the impaired or insolvent insurer or any other  
15 standard deemed by the board in its sole discretion as being fair and  
16 reasonable under the circumstances.

17 (2) Class B assessments against member insurers for each  
18 account shall be in the proportion that the premiums received on  
19 business in this state by each assessed member insurer on policies  
20 or contracts covered by each account for the three most recent  
21 calendar years for which information is available preceding the  
22 year in which the insurer became impaired or insolvent, as the case  
23 may be, bears to ~~such~~ premiums received on business in this state  
24 for those calendar years by all assessed member insurers.

25 (3) Assessments for funds to meet the requirements of the  
26 association with respect to an impaired or insolvent insurer shall  
27 not be made until necessary to implement the purposes of this  
28 article. Classification of assessments under subdivision (b) and  
29 computation of assessments under this subdivision shall be made  
30 with a reasonable degree of accuracy, recognizing that exact  
31 determinations may not always be possible.

32 (d) The association may abate or defer, in whole or in part, the  
33 assessment of a member insurer if, in the opinion of the board,  
34 payment of the assessment would endanger the ability of the  
35 member insurer to fulfill its contractual obligations. In the event  
36 an assessment against a member insurer is abated, or deferred in  
37 whole or in part, the amount by which that assessment is abated or  
38 deferred may be assessed against the other member insurers in a  
39 manner consistent with the basis for assessments set forth in this  
40 section.

1 (e) (1) The total of all assessments upon a member insurer for  
2 any account shall not in any one calendar year exceed ~~one~~ 1 percent  
3 of the insurer's average premiums received in this state on the  
4 policies and contracts covered by the account during the three  
5 calendar years preceding the year in which the insurer became an  
6 impaired or insolvent insurer. If the maximum assessment,  
7 together with the other assets of the association in any account,  
8 does not provide in any one year in that account an amount  
9 sufficient to carry out the responsibilities of the association, the  
10 necessary additional funds shall be assessed as soon thereafter as  
11 permitted by this article.

12 (2) The board may provide in the plan of operation a method  
13 of allocating funds among claims, whether relating to one or more  
14 impaired or insolvent insurers, when the maximum assessment  
15 will be insufficient to cover anticipated claims.

16 (f) The board may, by an equitable method as established in the  
17 plan of operation, refund to member insurers, in proportion to the  
18 contribution of each insurer to that account, the amount by which  
19 the assets of the account exceed the amount the board finds is  
20 necessary to carry out during the coming year the obligations of the  
21 association with regard to that account, including assets accruing  
22 from assignment, subrogation, net realized gains, and income  
23 from investments. A reasonable amount may be retained in any  
24 account to provide funds for the continuing expenses of the  
25 association and for future losses.

26 (g) It shall be proper for any member insurer, in determining its  
27 premium rates and policyowner dividends as to life or annuity of  
28 insurance within the scope of this article, to consider the amount  
29 reasonably necessary to meet its assessment obligations under this  
30 article.

31 (h) The association shall issue to each insurer paying an  
32 assessment under this article, other than class A assessment, a  
33 certificate of contribution, in a form prescribed by the  
34 commissioner, for the amount of the assessment so paid. All  
35 outstanding certificates shall be of equal dignity and priority  
36 without reference to amounts or date of issue. A certificate of  
37 contribution may be shown by the insurer in its financial statement  
38 as an asset in the form and for the amount, if any, and period of time  
39 as the commissioner may approve.

1 (i) (1) Subject to the provisions of paragraph (3), the plan of  
2 operation adopted pursuant to Section 1067.09 shall contain  
3 provisions whereby each member insurer is required to recoup  
4 over a reasonable length of time a sum reasonably calculated to  
5 recoup the assessments with respect to the health insurance  
6 account paid by the member insurer under this article by way of  
7 a surcharge on premiums charged for health insurance policies to  
8 which this article applies. Amounts recouped shall not be  
9 considered premiums for any other purpose, including the  
10 computation of gross premium tax or agent's commission.

11 (2) Member insurers who collect surcharges in excess of  
12 assessments paid pursuant to this section for an insolvent insurer  
13 shall remit the excess to the association as an additional assessment  
14 within 120 days after the end of the collection period as determined  
15 by the association. The excess shall be applied to reduce future  
16 health insurance account assessments for that insurer.

17 (3) The plan of operation may permit a member insurer to omit  
18 the collection of the surcharge from its insureds when it determines  
19 the amount of the surcharge collectible from each insured would  
20 be unreasonably small in relation to the potential confusion of or  
21 objection by the insureds even if the aggregate surcharges  
22 collectible from all insureds exceeds the expense of collection.

23 (j) Any statement of the amount of surcharge required to be  
24 provided by the association shall include a description of, and  
25 purpose for, the California Life and Health Insurance Guarantee  
26 Association, as follows:

27 "Companies writing health insurance business in California are  
28 required to participate in the California Life and Health Insurance  
29 Guarantee Association. If a company writing health insurance  
30 becomes insolvent, the California Life and Health Insurance  
31 Guarantee Association settles unpaid claims and assesses each  
32 insurance company for its fair share."

33 "California law requires all companies to surcharge policies to  
34 recover these assessments. If your policy is surcharged, "CA  
35 Surcharge" with an amount will be displayed on your premium  
36 notice."

37 SEC. 238. Section 1104.9 of the Insurance Code is amended  
38 to read:

39 1104.9. (a) (1) As used in this section, "qualified  
40 custodian" means: (A) commercial banks (as defined in Section

1 105 of the Financial Code), savings and loan associations (as  
2 defined in Section 5102 of the Financial Code), and trust  
3 companies (other than trust departments of title insurance  
4 companies), or any entity approved by the commissioner as a  
5 qualified custodian; (B) that is domiciled and has a principal place  
6 of business in this state; and (C) that either has a net worth of at  
7 least one hundred million dollars (\$100,000,000) or is able to  
8 demonstrate to the satisfaction of the commissioner that it is  
9 financially secure. The commissioner may consider, among other  
10 factors, evidence of the following in order to determine whether  
11 a custodian is financially secure for the purpose of this  
12 subdivision: (i) its obligations under an agreement approved by the  
13 commissioner pursuant to subdivision (c) are guaranteed by its  
14 parent holding company, (ii) its parent holding company has a net  
15 worth of at least one hundred million dollars (\$100,000,000), or  
16 (iii) it is a member of a holding company system with a net worth  
17 of at least one hundred million dollars (\$100,000,000).

18 (2) As used in this section, “qualified depository” means an  
19 entity that is located in this state or a reciprocal state and is (A) a  
20 depository that provides for the long-term immobilization of  
21 securities or a clearing corporation that is also a depository, and  
22 that in either case has been approved by or registered with the  
23 Securities and Exchange Commission, (B) a Federal Reserve  
24 bank, or (C) an entity approved by the commissioner as a qualified  
25 depository.

26 A “qualified depository” may also include an entity that is  
27 located outside the United States, if it is a securities depository and  
28 clearing agency, incorporated or organized under the laws of a  
29 country other than the United States, (i) that operates a  
30 transnational system for securities or equivalent book entries  
31 (specifically Euroclear and Cedel, or successors to all or  
32 substantially all of their operations), or (ii) that operates a central  
33 system for securities or equivalent book entries, but solely for  
34 securities issued by, or by entities within, the country in which the  
35 securities depository and clearing agency is incorporated or  
36 organized. The depository shall meet all qualifying requirements  
37 imposed by this section upon Euroclear or Cedel.

38 (3) As used in this section, “qualified subcustodian” means an  
39 entity located in this state or a reciprocal state (A) that holds  
40 securities of the domestic insurer, and maintains an account



1 through which the securities are held, in this state or a reciprocal  
2 state and (B) that has shareholder equity of at least one hundred  
3 million dollars (\$100,000,000) or is able to demonstrate to the  
4 satisfaction of the commissioner that it is financially secure. The  
5 qualified subcustodian shall be: (A) a commercial bank, a savings  
6 and loan association, or a trust company (other than trust  
7 departments of title insurance companies); (B) a subsidiary of a  
8 qualified custodian; or (C) any entity approved by the  
9 commissioner as a qualified subcustodian. The commissioner may  
10 consider, among other factors, evidence of the following in order  
11 to determine whether a subcustodian is financially secure for the  
12 purpose of this subdivision: (i) its obligations are guaranteed by its  
13 parent company, (ii) its parent holding company has shareholder  
14 equity of at least one hundred million dollars (\$100,000,000), or  
15 (iii) it is a member of a holding company system with shareholder  
16 equity of at least one hundred million dollars (\$100,000,000). A  
17 “qualified subcustodian” may also include an entity that is located  
18 outside the United States, that is used by the domestic insurer for  
19 the purpose of obtaining access to a qualified depository located  
20 outside the United States. The qualified foreign subcustodian shall  
21 be a banking institution or trust company, incorporated or  
22 organized under the laws of a country other than the United States,  
23 that is regulated by that country’s government or an agency  
24 thereof, and that has shareholders’ equity in excess of two hundred  
25 million dollars (\$200,000,000), whether in United States dollars  
26 or the equivalent of United States dollars, as of the close of its most  
27 recently completed fiscal year; or a majority-owned direct or  
28 indirect subsidiary of a qualified United States bank or bank  
29 holding company, if the subsidiary is incorporated or organized  
30 under the laws of a country other than the United States and has  
31 shareholders’ equity in excess of one hundred million dollars  
32 (\$100,000,000), whether in United States dollars or the equivalent  
33 of United States dollars, as of the close of its most recently  
34 completed fiscal year; or is able to demonstrate to the satisfaction  
35 of the commissioner that it is financially secure. The  
36 commissioner may consider, among other factors, evidence of the  
37 following in order to determine whether a qualified foreign  
38 subcustodian is financially secure for purposes of this subdivision:  
39 (i) its obligations are guaranteed by its parent company, (ii) its  
40 parent holding company has shareholder equity of at least two



1 hundred million dollars (\$200,000,000), or (iii) it is a member of  
2 a holding company system with shareholder equity of at least two  
3 hundred million dollars (\$200,000,000).

4 (4) As used in this section, “subsidiary” means: (A) an entity  
5 all of whose voting securities (other than director qualifying  
6 shares, if any) are owned, directly or indirectly, by a qualified  
7 custodian; or (B) any affiliated entity approved by the  
8 commissioner as a subsidiary of a qualified custodian. For the  
9 purpose of this section, an affiliated entity means an entity that (A)  
10 controls or is controlled, either directly or indirectly or through  
11 one or more intermediaries by a qualified custodian or (B) is under  
12 the common control, directly or indirectly, as or with a qualified  
13 custodian.

14 (5) As used in this section, “entity approved by the  
15 commissioner as a qualified custodian,” “entity approved by the  
16 commissioner as a qualified depository,” “entity approved by the  
17 commissioner as a qualified subcustodian,” and “entity approved  
18 by the commissioner as a subsidiary of a qualified custodian”  
19 mean those entities that meet the conditions or standards  
20 established by the commissioner. The commissioner shall charge  
21 and collect in advance a one-time fee of one thousand five hundred  
22 dollars (\$1,500) to review an application for approval of any entity  
23 pursuant to this section.

24 (6) As used in this section, “reciprocal state” has the same  
25 meaning as in subdivision (f) of Section 1064.1.

26 (7) As used in this section, “moneys” means cash held  
27 incidental to securities transactions occurring in the ordinary  
28 course of business with respect to securities held pursuant to the  
29 custodial agreements under this section.

30 (8) (A) Except as provided in subparagraph (B), as used in this  
31 section, “insurer,” “domestic insurer,” and “domestic admitted  
32 insurer” mean any insurer, other than a domestic life insurer that  
33 is incorporated or ~~which~~ *that* has its principal place of business in  
34 this state. Except as provided in subparagraph (B), no portion of  
35 this section applies to domestic life insurers nor shall this section  
36 affect the interpretation of any other portion of this code with  
37 respect to domestic life insurers nor is it intended to create a  
38 precedent for the application of its provisions to those insurers.  
39 However, the exclusion of domestic life insurers from this section  
40 shall not be construed to diminish the commissioner’s existing



1 authority over those insurers under any other provision of this  
2 code.

3 (B) Domestic life insurers that are wholly owned by any insurer  
4 other than a domestic life insurer or are part of an insurance  
5 holding company system whose other insurer affiliates are not  
6 domestic life insurers may elect to be subject to this section by  
7 affirmatively stating that election in the statement otherwise  
8 required to be filed by that system pursuant to Section 1215.4.

9 (b) Notwithstanding Section 1104.1, a domestic admitted  
10 insurer may maintain its securities and moneys in a reciprocal  
11 state, subject to the requirements of this section, through a  
12 custodian account located in California in or with a qualified  
13 custodian, and that qualified custodian may maintain those  
14 securities or moneys in a qualified depository or qualified  
15 subcustodian, either or both of which may be located in a  
16 reciprocal state. In addition, a domestic insurer that has foreign  
17 investments or any other investments that require delivery outside  
18 of the United States upon sale or maturity that qualify under  
19 Section 1240, 1241, or 10506, or any other provision of this code,  
20 may maintain those securities or moneys in or with a qualified  
21 depository located in a jurisdiction outside the United States.  
22 However, the aggregate amount of general account investments so  
23 deposited shall not exceed the lesser of 5 percent of the total  
24 admitted assets of the insurer or 25 percent of the excess of  
25 admitted assets over the sum of paid up capital, liabilities, and  
26 surplus required by Section 700.02. However, unless exempted by  
27 the commissioner, not more ~~that~~ *than* 50 percent of that amount of  
28 assets that an insurer is authorized to invest pursuant to Section  
29 1241 or 1241.1 may be maintained in any single country in a  
30 qualified depository as defined in clause (ii) of paragraph (2) of  
31 subdivision (a) and as to life companies not more than 12.5 percent  
32 of that amount of assets that an insurer is authorized to invest  
33 pursuant to Section 1241 or 1241.1 may be maintained in any  
34 single country in a qualified depository as defined in clause (ii) of  
35 paragraph (2) of subdivision (a). The percentage or dollar value of  
36 admitted assets and paid up capital and liabilities shall be  
37 determined by the insurer's last preceding annual statement of  
38 conditions and affairs made as of the preceding December 31 that  
39 has been filed with the commissioner pursuant to law. No broker  
40 or agent, as defined in the Federal Securities Exchange Act of 1934

1 (15-~~U.S.C.A.~~ U.S.C. Sec. 78c et seq.), may serve as a qualified  
2 custodian, qualified subcustodian, or qualified depository under  
3 this section. However, no otherwise qualified custodian or  
4 subcustodian shall be disqualified on account of its activities as a  
5 broker or dealer, as so defined, when the activities are incidental  
6 to its custodial or other business.

7 (c) No securities shall be deposited in or with a qualified  
8 custodian, qualified depository, or qualified subcustodian except  
9 as authorized by an agreement between the insurer and the  
10 qualified custodian, if the agreement is satisfactory to and has been  
11 approved by the commissioner. The agreement shall require that  
12 the securities be held by the qualified custodian for the benefit of  
13 the insurer and that the books and records of the qualified  
14 custodian shall so designate. The agreement shall further require  
15 that beneficial title to the securities remain in the insurer and shall  
16 require that the qualified subcustodian and qualified depository be  
17 the agents of the qualified custodian. The agreement shall also  
18 specifically require that the qualified custodian shall exercise the  
19 standard of care of a professional custodian engaged in the banking  
20 or trust company industry and having professional expertise in  
21 financial and securities processing transactions and custody would  
22 observe in these affairs. This section does not affect the burden of  
23 proof under applicable law with respect to the assertion of liability  
24 in any claim, action, or dispute alleging any breach of, or failure  
25 to observe, that standard of care.

26 (d) No agreement between the qualified custodian and the  
27 insurer shall be approved by the commissioner unless the qualified  
28 custodian agrees therein to comply with this section. Except when  
29 the agreement is submitted in conjunction with an application for  
30 an original certificate of authority or variable contract  
31 qualification, a fee of five hundred dollars (\$500) shall be paid to  
32 the commissioner at the time of filing the agreement for approval.  
33 However, no fee shall be required if the form of the agreement has  
34 been previously submitted for approval and approved by the  
35 commissioner as certified by the insurer and qualified custodian  
36 submitting the agreement to the commissioner. The agreement  
37 shall be deemed approved unless, within 60 days after receipt by  
38 the commissioner of that agreement and any required filing fee, the  
39 commissioner has disapproved the agreement in writing citing  
40 specific reasons for disapproval.

1 (e) Notwithstanding the maintenance of securities with an  
2 out-of-state qualified depository or qualified subcustodian  
3 pursuant to agreement, if the commissioner has reasonable cause  
4 to believe that the domestic insurer (1) is conducting its business  
5 and affairs in ~~such~~ a manner as to threaten to render it insolvent,  
6 or (2) is in a hazardous condition or is conducting its business and  
7 affairs in a manner that is hazardous to its policyholders, creditors,  
8 or the public, or (3) has committed or is committing or has engaged  
9 or is engaging in any act that would constitute grounds for  
10 rendering it subject to conservation or liquidation proceedings, or  
11 if the commissioner determines that irreparable loss and injury to  
12 the property and business of the domestic insurer has occurred or  
13 may occur unless the commissioner acts immediately, then the  
14 commissioner may, without hearing, order the insurer and the  
15 qualified custodian promptly to effect the transfer of the securities  
16 back to a qualified custodian, qualified subcustodian, or qualified  
17 depository located in this state from any qualified depository or  
18 qualified subcustodian located outside of this state (the transfer  
19 order). Upon receipt of the transfer order, the qualified custodian  
20 shall promptly effect the return of the securities. Notwithstanding  
21 the pendency of any hearing or action provided for in subdivision  
22 (f), the transfer order shall be complied with by those persons  
23 subject to that order. Any challenge to the validity of the transfer  
24 order shall be made in accordance with subdivision (f). It is the  
25 responsibility of both the insurer and the qualified custodian to  
26 oversee that compliance with the transfer order is completed as  
27 expeditiously as possible. Upon receipt of a transfer order, there  
28 shall be no trading of the securities without specific instructions  
29 from the commissioner until the securities are received in this  
30 state, except to the extent trading transactions are in process on the  
31 day the transfer order is received by the insurer and the failure to  
32 complete the trade may result in loss to the insurer's account.  
33 Issuance of a transfer order does not affect the qualified  
34 custodian's liabilities with regard to the securities that are the  
35 subject of the order.

36 (f) At the same time the transfer order is served, the  
37 commissioner shall issue and also serve upon the insurer a notice  
38 of hearing to be held at a time and place fixed therein which shall  
39 not be less than 20 nor more than 45 days after the service thereof.  
40 Upon request of the insurer and agreement of the department, the

1 hearing may be held within a shorter time but in no event less than  
2 10 days after the service of the notice of hearing. The transfer order  
3 and notice of hearing may be served by certified mail, express  
4 mail, messenger, telegram, or any other means calculated to give  
5 prompt actual notice to (1) the California office of the insurer  
6 designated in the agreement, its home office as shown on its most  
7 recently filed annual or quarterly statement, or its California agent  
8 for service of process; and (2) the California office of the qualified  
9 custodian designated in the agreement. If, as a result of the hearing,  
10 any of the statements as to conduct, conditions, or grounds for the  
11 transfer order are found to be true, or if other conditions or grounds  
12 are discovered or become known at the hearing and are found to  
13 be true, the commissioner shall affirm the transfer order and may  
14 make additional order or orders, pertaining to the transfer order,  
15 as may be reasonably necessary.

16 The insurer subject to the transfer order is entitled to judicial  
17 review in the state of the commissioner's order issued as a result  
18 of the hearing.

19 Alternatively, at any time prior to the commencement of the  
20 hearing on the transfer order, the insurer may waive the hearing  
21 and have judicial review in this state of the transfer order by  
22 petition for writ of mandate and declaratory relief without first  
23 exhausting administrative remedies or procedures. In that event  
24 the insurer is not entitled to any extraordinary remedies prior to  
25 trial.

26 No person other than the insurer has standing at the hearing by  
27 the commissioner or for any judicial review of the transfer order.

28 SEC. 239. Section 1280.7 of the Insurance Code is amended  
29 to read:

30 1280.7. This chapter and the other provisions of this code,  
31 except as set forth in this paragraph, shall not apply to or affect  
32 unincorporated interindemnity or reciprocal or interinsurance  
33 contracts between members of a cooperative corporation,  
34 organized and operating under Part 2 (commencing with Section  
35 12200) of Division 3 of Title 1 of the Corporations Code, whose  
36 members consist solely of physicians and surgeons licensed in  
37 California, which contracts indemnify solely in respect to medical  
38 malpractice claims against those members, and which do not  
39 collect in advance of loss any moneys other than contributions by  
40 each member to a collective reserve trust fund or for necessary



1 expenses of administration. However, interindemnity, reciprocal,  
2 or interinsurance contracts with respect to the following types of  
3 claims, in addition to medical malpractice claims, may be entered  
4 into in conjunction with contracts with respect to medical  
5 malpractice claims if the reserve trust fund is at least twenty  
6 million dollars (\$20,000,000):

7 (1) Bodily injury or property damage arising out of the conduct  
8 and of the operations of the member's professional practice  
9 occurring on the member's premises.

10 (2) Officers', directors', and administrators' liability, to the  
11 extent that the member's professional practice is operated as a  
12 professional corporation or group.

13 (3) Nonowned automobile coverage.

14 The provisions of Chapter 3 (commencing with Section 330) of  
15 Part 1 of Division 1 shall apply to unincorporated interindemnity  
16 or reciprocal or interinsurance contracts. Those unincorporated  
17 interindemnity or reciprocal or interinsurance contracts shall  
18 comply with all of the following requirements:

19 (a) Each participating member shall enter into and,  
20 concurrently therewith, receive an executed copy of a trust  
21 agreement, which shall govern the collection and disposition of all  
22 funds of the interindemnity arrangement.

23 The trust agreement shall, *as at* a minimum, contain provision  
24 for all the following matters:

25 (1) An initial trust corpus of not less than ten million dollars  
26 (\$10,000,000), which corpus shall be a trust fund to secure  
27 enforcement of the interindemnity arrangement. The average  
28 contribution to the initial trust corpus shall be not less than twenty  
29 thousand dollars (\$20,000) per member participating in the  
30 interindemnity arrangement. The average contribution to the trust  
31 fund shall continue at all times to be not less than twenty thousand  
32 dollars (\$20,000) per participating member unless the  
33 interindemnity arrangement is qualified to admit members under  
34 the terms of subdivision (k). No such interindemnity arrangement  
35 shall become operative until the requisite minimum reserve trust  
36 fund has been established by contributions from not ~~less~~ *fewer*  
37 than 500 participating members.

38 (2) The reserve trust fund created by the trust agreement shall  
39 be administered by a board of trustees of three or more members,  
40 all of whom shall be physicians and surgeons licensed in

1 California, participating members in the interindemnity  
2 arrangement, and elected biennially or more frequently by at least  
3 a majority of all members participating in the interindemnity  
4 arrangement.

5 (3) The members of the board of trustees are fiduciaries and the  
6 board shall be the custodian of all funds of the interindemnity  
7 arrangement, and all those funds shall be deposited in ~~such~~ *the*  
8 bank or banks and savings and loan associations in California as  
9 the board may designate. Each account shall require two or more  
10 signatories for withdrawal of funds in excess of ten thousand  
11 dollars (\$10,000). The authorized signatories shall be appointed  
12 by the board and, ~~and~~ as to any withdrawal in excess of one  
13 hundred thousand dollars (\$100,000), at least one of the two or  
14 more authorized signatories shall be a physician and surgeon  
15 licensed in California and a participating member in the  
16 interindemnity arrangement. Each signatory on those accounts  
17 shall maintain, at all times while empowered to draw on those  
18 funds, for the benefit of the interindemnity arrangement, a bond  
19 against loss suffered through embezzlement, mysterious  
20 disappearance, holdup or burglary, or other loss issued by a  
21 bonding company licensed to do business in California in a penal  
22 sum of not less than one hundred thousand dollars (\$100,000).

23 (4) All funds held in trust ~~which~~ *that* are in excess of current  
24 financial needs shall be invested and reinvested from time to time,  
25 under the direction of the board of trustees, in eligible securities,  
26 as defined in Section 16430 of the Government Code, in portfolios  
27 of eligible securities, in exchange traded financial futures  
28 contracts or exchange traded options contracts to hedge  
29 investment in those eligible securities, or in certificates of deposits  
30 or time deposits issued by banks and savings and loan associations  
31 in California duly insured by instrumentalities of the United States  
32 government.

33 Pursuant to the authority contained in Section 1 of Article XV  
34 of the California Constitution, the restrictions upon rates of  
35 interest contained in Section 1 of Article XV of the California  
36 Constitution shall not apply to any obligations of, loans made by,  
37 or forbearances of, any trust established by a cooperative  
38 corporation providing indemnity pursuant to this section.

39 (5) The income earned on the corpus of the trust fund shall be  
40 the source for the payment of the claims, costs, judgments,



1 settlements, and costs of administration contemplated by the  
 2 interindemnity arrangement, and to the extent the income is  
 3 insufficient for those purposes, the board of trustees shall have the  
 4 power and authority to assess participating members for all  
 5 amounts necessary to meet the obligations of the interindemnity  
 6 arrangement in accordance with the terms thereof. ~~Where~~ *If*  
 7 necessary in the best interests of the interindemnity arrangement,  
 8 the board of trustees may make assessments to increase the corpus  
 9 of the trust fund in accordance with the terms of the interindemnity  
 10 arrangement. Any assessment levied against a member shall be the  
 11 personal obligation of the member. Any person who obtains a final  
 12 judgment of recovery for medical malpractice or other liability  
 13 authorized by this section against a member of the interindemnity  
 14 arrangement shall have, in addition to any other remedy, the right  
 15 to assert directly all rights to indemnification ~~which~~ *that* the  
 16 judgment debtor has under the interindemnity arrangement. The  
 17 final judgment shall be a lien on the reserve trust fund to secure  
 18 payment of the judgment, limited to the extent of the judgment  
 19 debtor's rights to indemnification.

20 Any change in the assessment agreement between the  
 21 interindemnity arrangement and its membership shall be  
 22 submitted to the entire membership for ratification. If the  
 23 ratification process is to be performed by a mail ballot, a ballot  
 24 shall be sent to each member by first-class mail, postage prepaid.  
 25 Within 45 days after the posted date on the mail ballot, each  
 26 member who decides to vote on the assessment change shall return  
 27 his or her ballot to the interindemnity arrangement for the tallying  
 28 of the ballots. An affirmative vote of 75 percent of those voting  
 29 shall be required to effectuate any change in the assessment  
 30 agreement.

31 If a change in the assessment agreement is to be submitted to  
 32 members at a properly called meeting, the membership shall be  
 33 notified of the meeting and the proposed assessment change by  
 34 first-class mail, postage prepaid, posted at least 45 days prior to the  
 35 meeting. Seventy-five percent of those present in person or by  
 36 proxy at the meeting shall be required to effectuate any change in  
 37 the assessment agreement.

38 (6) Each participating member shall be covered by the  
 39 interindemnity arrangement for not less than one million dollars  
 40 (\$1,000,000) for each occurrence of professional negligence or



1 other liability authorized by this section, with the terms and  
2 conditions of the coverage to be specified in the trust agreement,  
3 except that the interindemnity arrangement may provide  
4 participating members with an aggregate limit for all payments on  
5 behalf of the member and may provide participating members with  
6 less than one million dollars (\$1,000,000) of coverage for each  
7 occurrence of professional negligence or other liability authorized  
8 by this section if the interindemnity arrangement obtains for the  
9 benefit of the members reinsurance of excess limits coverage in an  
10 amount ~~which~~ *that* when added to the coverage provided by the  
11 interindemnity arrangement would equal not less than one million  
12 dollars (\$1,000,000) for each occurrence of professional  
13 negligence or other liability authorized by this section.

14 Any change in the coverage provided by the trust agreement  
15 between the interindemnity arrangement and its membership shall  
16 be submitted to the entire membership for ratification. If the  
17 ratification process is to be performed by a mail ballot, a ballot  
18 shall be sent to each member by first-class mail, postage prepaid.  
19 Within 45 days after the posted date on the mail ballot, each  
20 member who decides to vote on the coverage change shall return  
21 his or her ballot to the interindemnity arrangement for the tallying  
22 of the ballot. An affirmative vote of 75 percent of those voting shall  
23 be required to effectuate any change in the coverage provided by  
24 the trust agreement, except that at least 50 percent of the entire  
25 membership must agree to any ~~such~~ change.

26 If any ~~such~~ change is to be submitted to members at a properly  
27 called meeting, the membership shall be notified of the meeting  
28 and the proposed coverage change by first-class mail, postage  
29 prepaid, posted at least 45 days prior to the meeting. An  
30 affirmative vote of 75 percent of the membership present at the  
31 meeting, in person or by proxy, shall be required to effectuate any  
32 ~~such~~ change, except that at least 50 percent of the entire  
33 membership must agree to any ~~such~~ change.

34 (7) Withdrawal of all, or any portion of, the corpus of the  
35 reserve trust fund shall be upon the written authorization signed by  
36 at least two-thirds of the members of the board of trustees.

37 (8) The board of trustees shall cause both of the following to be  
38 furnished to each member participating in the interindemnity  
39 arrangement, and to be filed with the Commissioner of  
40 Corporations:



(A) Within 90 days after the end of each fiscal year, a statement of the assets and liabilities of the interindemnity arrangement as of the end of that year, a statement of the revenue and expenditures of the interindemnity arrangement, and a statement of the changes in corpus of the reserve trust for that year, in each case accompanied by a certificate signed by a firm of independent certified public accountants selected by the board of trustees indicating that the firm has conducted an audit of those statements in accordance with generally accepted auditing standards and indicating the results of the audit.

(B) Within 45 days after the end of each of the first three quarterly periods of each fiscal year, a statement of the assets and liabilities of the interindemnity arrangement as of the end of the quarterly period, a statement of the revenue and expenditures of the interindemnity arrangement, and a statement of the changes in corpus of the reserve trust for the period, in each case accompanied by a certificate signed by a majority of the members of the board of trustees to the effect that the statements were prepared from the official books and records of the interindemnity arrangement.

(C) In addition to the statements required to be filed pursuant to this paragraph, the board of trustees shall annually file with the Commissioner of Corporations an authorization for disclosure to the commissioner of all financial records pertaining to the interindemnity arrangement. For the purpose of this ~~clause~~ *subparagraph*, the authorization for disclosure shall also include the financial records of any association, partnership, or corporation that has management or control of the funds or the operation of the interindemnity arrangement.

(9) The trust agreement shall also provide for all the following:

(A) In the event a participating member who is in full compliance with the trust agreement, including the payment of all outstanding dues and assessments, dies, the initial contribution made by the decedent shall be returned to the member's estate or designated beneficiary; the indemnity coverage shall continue for the benefit of the decedent's estate in respect of occurrences during the time the decedent was a participating member; and neither the person receiving the repayment of the initial contribution nor the decedent's estate shall be responsible for any assessments levied following the death of the member.

1 (B) A participating member who is then in full compliance with  
2 the trust agreement and who has reached the age of 65 and who has  
3 retired completely from the practice of medicine may elect to retire  
4 from the interindemnity arrangement, in which case the member  
5 shall not be responsible for assessments levied following the date  
6 notice of retirement is given to the trust. Following that retirement,  
7 the indemnity coverage shall continue for the benefit of the  
8 member in respect of occurrences prior to the time the member  
9 retired from the interindemnity arrangement. That retired  
10 member's initial contribution shall be repaid 10 years from the  
11 date the notice of retirement is received by the trust, or ~~such an~~  
12 earlier date as specified in the trust agreement. The board of  
13 trustees may reduce the age for retirement to not less than 55 years  
14 subject to all other requirements in this paragraph and any  
15 additional requirements deemed necessary by the board.

16 (C) During any period in which a participating member, who  
17 is then in full compliance with the trust agreement, has, in the  
18 judgment of the board of trustees, become unable to perform any  
19 and every duty of his or her regular professional occupation, the  
20 participating member may request disability status in accordance  
21 with the terms of the interindemnity arrangement. During any  
22 period of disability status, the member shall not be responsible for  
23 assessments levied during the period and, ~~where~~ *if* so provided in  
24 the interindemnity arrangement, all indemnity coverage, both as  
25 to defense and payment of claims, shall terminate as to occurrences  
26 arising out of the actions of the participating member during the  
27 period of disability status.

28 (D) In the event a participating member fails to pay any  
29 assessment when ~~the same is~~ due, the board of trustees may  
30 terminate that person's membership status if the failure to pay is  
31 not cured within 30 days from the date the assessment was due.  
32 Upon that termination the former participating member shall not  
33 be entitled to the return of all or any part of his or her initial  
34 contribution, and the indemnity coverage shall thereupon  
35 terminate as to all claims then pending against that person and in  
36 respect to all occurrences prior to the date of that termination of  
37 membership. However, in the event the interindemnity  
38 arrangement is then providing legal defense services to that  
39 person, the interindemnity arrangement shall continue to provide  
40 those services for a period of 10 days following that termination.

1 (E) In the event a participating member fails to comply with  
2 any provision of the trust agreement (other than a failure to pay  
3 assessments when due), the board of trustees may terminate that  
4 person's membership status if the failure to comply is not cured  
5 within 60 days from the date the person is notified of the failure;  
6 provided that before that membership status may be terminated the  
7 person shall be given the right to call for a hearing before the board  
8 of trustees (to be held before the expiration of the 60-day period),  
9 at which hearing the person shall be given the opportunity to  
10 demonstrate to the board of trustees that no failure to comply has  
11 occurred or, if it has occurred, that it has been cured. Upon that  
12 termination, the former participating member shall not be entitled  
13 to the return of all or any part of his or her initial contribution, and  
14 the indemnity coverage shall thereupon terminate as to all claims  
15 then pending against the person and in respect to all occurrences  
16 prior to the date of the termination of membership. However, in the  
17 event the interindemnity arrangement is then providing legal  
18 defense services to that person, the interindemnity arrangement  
19 shall continue to provide those services for a period of 10 days  
20 following the termination.

21 (F) A participating member who is then in full compliance with  
22 the trust agreement may elect voluntarily to terminate his or her  
23 membership in the interindemnity arrangement. Upon that  
24 voluntary termination, that person may further elect to cease being  
25 responsible for future assessments, or to continue to pay those  
26 assessments until the time as the person's initial contribution is  
27 repaid. In the event the person elects to cease being responsible for  
28 future assessments, the indemnity coverage shall thereupon  
29 terminate and the person shall either be responsible for his or her  
30 own exposure for acts committed while a participating member in  
31 the interindemnity arrangement, or he or she may request the  
32 interindemnity arrangement to purchase or provide, at the cost of  
33 the person, coverage for that exposure. The initial contribution of  
34 the person shall be repaid on the 10th anniversary of the date the  
35 contribution was made. In the event the person elects to continue  
36 to be responsible for assessments, the indemnity coverage shall  
37 continue in respect of occurrences prior to the date of the voluntary  
38 termination, and the initial contribution of the person shall be  
39 repaid at ~~such~~ the time as the board of trustees is satisfied that (i)  
40 there are no claims pending against the person in respect of

1 occurrences during the time the person was a participating  
2 member, and (ii) the statute of limitations has run on all claims  
3 ~~which~~ *that* might be asserted against that person in respect of  
4 occurrences during that time. In no event shall that repayment be  
5 made earlier than the 10th anniversary of the date the contribution  
6 was made.

7 Any person whose membership in an interindemnity  
8 arrangement is involuntarily terminated for failure to pay  
9 assessments or who voluntarily terminates that membership and  
10 elects to be responsible for his or her own exposure for acts  
11 committed while a participating member, shall not be eligible to  
12 become a member of any other interindemnity arrangement for a  
13 period of five years after the termination unless, on the effective  
14 date of the act which amended this section during the 1985–86  
15 Regular Session, the person had on file with the Department of  
16 Corporations a copy of a subscription agreement signifying the  
17 person's agreement to transfer membership or had paid a  
18 minimum of ten thousand dollars (\$10,000) to another  
19 interindemnity arrangement ~~which~~ *that* was granted a permit to  
20 organize prior to January 1, 1985.

21 (G) The board of trustees shall have the right to terminate the  
22 membership of a participating member ~~where~~ *if* the board of  
23 trustees determines that the termination is in the best interests of  
24 the interindemnity arrangement even though that person has  
25 complied with all of the provisions of the trust agreement. ~~Such a~~  
26 A termination may be effected only if at least two-thirds of the  
27 members of the board of trustees indicate in writing their decision  
28 ~~so~~ to terminate. If the board of trustees proposes ~~so~~ to terminate a  
29 member, the member shall have the right to call a special meeting  
30 of all participating members in accordance with the rules  
31 established by the board of trustees for the purpose of voting on  
32 whether or not the member shall be ~~so~~ terminated. The member  
33 shall not be ~~so~~ terminated if at least two-thirds of the participating  
34 members present, in person or by proxy, indicate that the member  
35 should not be ~~so~~ terminated. In the event a member is ~~so~~  
36 terminated, the person shall elect either: (i) to request the return of  
37 his or her initial contribution, in which case the ~~same~~ *contribution*  
38 shall be repaid and the indemnity coverage shall thereupon  
39 terminate as to all claims then pending against the person and in  
40 respect to all occurrences prior to the date of the termination of

1 membership. However, in the event the interindemnity  
2 arrangement is then providing legal defense services to the person,  
3 the interindemnity arrangement shall continue to provide those  
4 services for a period of 30 days to enable the person to assume his  
5 or her own defense; or (ii) to release all rights to the return of the  
6 initial contribution, in which case the indemnity coverage shall  
7 continue for the benefit of the member in respect of occurrences  
8 during the time the person was a participating member and the  
9 person shall have no responsibility for assessments levied  
10 following that termination. The interindemnity arrangement may  
11 provide that if a member is ~~so~~ terminated and fails to make the  
12 election set forth herein within 45 days of the date of notification  
13 of termination of membership, the participating member shall be  
14 deemed to have elected to release all rights to a return of his or her  
15 initial contribution, in which case indemnity coverage shall apply  
16 for the benefit of the member with respect to occurrences  
17 occurring prior to the termination.

18 (10) Each member participating in the interindemnity  
19 arrangement shall have the right of access to, and the inspection of,  
20 the books and records of the interindemnity arrangement, which  
21 rights shall be similar to the corporate shareholders pursuant to  
22 Section 3003 of the Corporations Code, or, commencing January  
23 1, 1977, Sections 1600 to 1605, inclusive, of the Corporations  
24 Code.

25 (11) There shall be a meeting of all members participating in  
26 the interindemnity arrangement, at least annually, after not less  
27 than 10 days' written notice has been given, at a location  
28 reasonably convenient to the participating members and on a date  
29 ~~which~~ *that* is within a reasonable period of time following the  
30 distribution of the annual financial statements.

31 (12) Notwithstanding Sections 12453 and 12703 of the  
32 Corporations Code, on any matter to be voted upon by the  
33 membership at either a regular or special meeting, a member shall  
34 have the right to vote in person or by written proxy filed with the  
35 corporate secretary prior to the meeting. No ~~such~~ proxy shall be  
36 made irrevocable, nor be valid beyond the earliest of the following  
37 dates:

38 (A) The date of expiration set forth in the proxy;~~or~~.

39 (B) The date of termination of membership;~~or~~.

40 (C) Eleven months from the date of execution of the proxy;~~or~~.



1 (D) Such time as may be specified in the bylaws, not to exceed  
2 11 months.

3 (13) The interindemnity arrangement, and the reserve trust  
4 fund incident thereto, shall be subject to termination at any time  
5 by the vote or written consent of not less than three-fourths of the  
6 participating members.

7 (b) The board of trustees shall cause to be recorded with the  
8 office of the county recorder of the county of the principal place  
9 of business of the interindemnity arrangement within 90 days  
10 following the end of each fiscal year, a written statement, executed  
11 by a majority of the board of trustees under penalty of perjury,  
12 reciting that each member participating in the interindemnity  
13 arrangement was mailed a copy of the annual financial statement  
14 and quarterly audit certificates by first-class mail, postage prepaid,  
15 required pursuant to paragraph (8) of subdivision (a).

16 (c) Each person solicited to become a participating member in  
17 ~~such~~ an interindemnity arrangement shall receive in writing, at  
18 least 48 hours prior to the execution by the prospective  
19 participating member of the trust agreement, and at least 48 hours  
20 prior to the payment by the prospective participating member of  
21 any consideration in connection with the interindemnity  
22 arrangements, the following information:

23 (1) A copy of the articles of incorporation and bylaws of the  
24 cooperative corporation and a copy of the form of trust agreement  
25 to be executed by the prospective participating member.

26 (2) A disclosure statement regarding the interindemnity  
27 arrangement. The disclosure statement shall contain on the first or  
28 cover page a legend in boldface type reading substantially as  
29 follows:

30 "THE INTERINDEMNITY ARRANGEMENT  
31 CONTEMPLATED HEREIN PROVIDES THAT  
32 PARTICIPATING MEMBERS HAVE UNLIMITED  
33 PERSONAL LIABILITY FOR ASSESSMENTS ~~WHICH~~ THAT  
34 MAY BE LEVIED TO PAY FOR THE PROFESSIONAL  
35 NEGLIGENCE OR OTHER LIABILITY AUTHORIZED BY  
36 THIS SECTION. NO ASSURANCES CAN BE GIVEN  
37 REGARDING THE AMOUNT OR FREQUENCY OF  
38 ASSESSMENTS WHICH MAY BE ~~SO~~ LEVIED, OR THAT  
39 ALL PARTICIPATING MEMBERS WILL MAKE TIMELY  
40 PAYMENT OF THEIR ASSESSMENTS TO COVER THE



1 PROFESSIONAL NEGLIGENCE OR OTHER LIABILITY  
2 AUTHORIZED BY THIS SECTION.”

3 (3) The disclosure statement shall further contain all of the  
4 following information:

5 (A) The amount, nature, and terms and conditions of the  
6 professional negligence or other liability relating to a member’s  
7 professional practice coverage available under the interindemnity  
8 arrangement.

9 (B) The amount of the initial contribution required of each  
10 participating member and a statement of the minimum number of  
11 members and aggregate contributions required for the  
12 interindemnity arrangement to commence.

13 (C) The names, addresses, and professional experience of each  
14 member of the board of trustees.

15 (D) The requirements for admission as a participating member.

16 (E) A statement of the services to be provided under the  
17 interindemnity arrangement to each participating member.

18 (F) A statement regarding the obligation of each member to pay  
19 assessments and the consequences for failure to do so.

20 (G) A statement of the rights and obligations of a participating  
21 member in the event the member dies, retires, becomes disabled,  
22 or terminates participation for any reason, or the interindemnity  
23 arrangement terminates for any reason.

24 (H) A statement regarding the services to be provided,  
25 indicating whether these services will be delegated to others  
26 pursuant to a contractual arrangement. For those services  
27 delegated to others pursuant to a contractual arrangement, a  
28 statement fully disclosing and itemizing all consideration received  
29 directly or indirectly under the arrangement, and indicating what  
30 the consideration is for, and how, when, and to whom the  
31 consideration will be paid.

32 (I) A statement of the voting rights of the members and the  
33 circumstances under which participation of a member may be  
34 terminated and under which the interindemnity arrangement may  
35 be terminated.

36 (J) If any statement of estimated or projected financial  
37 information for the interindemnity arrangement is used, a  
38 statement of the estimation or projection and a summary of the data  
39 and assumptions upon which it is based.

1 (4) A list with the names and addresses of current participating  
2 members of the interindemnity arrangement.

3 (d) No officer, director, trustee, employee, or member of the  
4 interindemnity arrangement or the cooperative corporation shall  
5 receive, or be entitled to receive, any payment, bonus, salary,  
6 income, compensation, or other benefit whatsoever, either from  
7 the reserve trust fund or the income therefrom or from any other  
8 funds of the interindemnity arrangement or the members thereof  
9 based on the number of participating members, or the amount of  
10 the reserve trust fund or other funds of the interindemnity  
11 arrangement.

12 (e) A peer review committee or committees shall be established  
13 by the trust agreement to review the qualifications of any physician  
14 and surgeon to participate or continue to participate in the  
15 interindemnity arrangement, and to review the quality of medical  
16 services rendered by any participating member, as well as the  
17 validity of medical malpractice claims made against participating  
18 members. Any physician and surgeon, prior to becoming a  
19 participating member of the interindemnity arrangement, shall be  
20 reviewed and approved by a majority of the members of the peer  
21 review committee. No peer review committee, or any of its  
22 members, shall be liable for any action taken by the committee in  
23 reviewing the qualifications of a physician and surgeon to  
24 participate or continue to participate, or the quality of medical  
25 services rendered, or the validity of a medical malpractice claim,  
26 unless it is alleged and proved that the action was taken with actual  
27 malice.

28 (f) The following are hereby defined as unfair methods of  
29 competition and deceptive acts or practices with respect to  
30 cooperative corporations or interindemnity arrangements  
31 provided for in this section-:

32 (1) Making any false or misleading statement as to, or issuing,  
33 circulating, or causing to be made, issued, or circulated, any  
34 estimate, illustration, circular, or statement misrepresenting the  
35 terms of any interindemnity arrangement or the benefits or  
36 advantages promised thereby, or making any misleading  
37 representation or any misrepresentation as to the financial  
38 condition of the interindemnity arrangement, or making any  
39 misrepresentation to any participating member for the purpose of  
40 inducing or tending to induce the member to lapse, forfeit, or

1 surrender his or her rights to indemnification under the  
2 interindemnity arrangement. It shall be a false or misleading  
3 statement to state or represent that a cooperative corporation or  
4 interindemnity arrangement is or constitutes “insurance” or an  
5 “insurance company” or an “insurance policy.”

6 (2) Making or disseminating or causing to be made or  
7 disseminated before the public in this state, in any newspaper or  
8 other publication, or any advertising device, or by public outcry or  
9 proclamation, or in any other manner or means whatsoever, any  
10 statement containing any assertion, representation, or statement  
11 with respect to those cooperative corporations or interindemnity  
12 arrangements, or with respect to any person in the conduct of those  
13 cooperative corporations or interindemnity arrangements, which  
14 is untrue, deceptive, or misleading, and which is known, or which  
15 by the exercise of reasonable care should be known, to be untrue,  
16 deceptive, or misleading. It shall be a false or misleading statement  
17 to state or represent that a cooperative corporation or  
18 interindemnity arrangement is or constitutes “insurance” or an  
19 “insurance company” or an “insurance policy.”

20 (3) Entering into any agreement to commit, or by any concerted  
21 action committing, any act of boycott, coercion, or intimidation  
22 resulting in or tending to result in an unreasonable restraint of, or  
23 monopoly in, those cooperative corporations or interindemnity  
24 arrangements.

25 (4) Filing with any supervisory or other public official, or  
26 making, publishing, disseminating, circulating, or delivering to  
27 any person, or placing before the public, or causing directly or  
28 indirectly, to be made, published, disseminated, circulated, or  
29 delivered to any person, or placed before the public any false  
30 statement of financial condition of a cooperative corporation or  
31 interindemnity arrangement with intent to deceive.

32 (5) Making any false entry in any book, report, or statement of  
33 a cooperative corporation or interindemnity arrangement with  
34 intent to deceive any agent or examiner lawfully appointed to  
35 examine into its condition or into any of its affairs, or any public  
36 official to whom a cooperative corporation or interindemnity  
37 arrangement is required by law to report, or who has authority by  
38 law to examine into its condition or into any of its affairs, or, with  
39 like intent, willfully omitting to make a true entry of any material  
40 fact pertaining to a cooperative corporation or interindemnity

1 arrangement in any book, report, or statement of a cooperative  
2 corporation or interindemnity arrangement.

3 (6) Making or disseminating, or causing to be made or  
4 disseminated, before the public in this state, in any newspaper or  
5 other publication, or any other advertising device, or by public  
6 outcry or proclamation, or in any other manner or means whatever,  
7 whether directly or by implication, any statement that ~~such~~ a  
8 cooperative corporation or interindemnity arrangement is a  
9 member of the California Insurance Guarantee Association, or  
10 insured against insolvency as defined in Section 119.5. This  
11 paragraph shall not be interpreted to prohibit any activity of the  
12 California Insurance Guarantee Association or of the  
13 commissioner authorized, directly or by implication, by Article  
14 14.2 (commencing with Section 1063) of Chapter 1 ~~of this part~~.

15 (7) Knowingly committing or performing with ~~such~~ a  
16 frequency as to indicate a general business practice any of the  
17 following unfair claims settlement practices:

18 (A) Misrepresenting to claimants pertinent facts or provisions  
19 relating to any coverage at issue.

20 (B) Failing to acknowledge and act promptly upon  
21 communications with respect to claims arising under those  
22 interindemnity arrangements.

23 (C) Failing to adopt and implement reasonable standards for  
24 the prompt investigation and processing of claims arising under  
25 those interindemnity arrangements.

26 (D) Failing to affirm or deny coverage of claims within a  
27 reasonable time after proof of claim requirements have been  
28 completed and submitted by the participating member.

29 (E) Not attempting in good faith to effectuate prompt, fair, and  
30 equitable settlements of claims in which liability has become  
31 reasonably clear.

32 (F) Compelling participating members to institute litigation to  
33 recover amounts due under an interindemnity arrangement by  
34 offering substantially less than the amounts ultimately recovered  
35 in actions brought by those participating members when those  
36 participating members have made claims under those  
37 interindemnity arrangements for amounts reasonably similar to  
38 the amounts ultimately recovered.

39 (G) Attempting to settle a claim by a participating member for  
40 less than the amount to which a reasonable person would have

1 believed he or she was entitled by reference to written or printed  
2 advertising material accompanying or made part of an application  
3 for membership in an interindemnity arrangement.

4 (H) Attempting to settle claims on the basis of an  
5 interindemnity arrangement ~~which~~ *that* was altered without notice  
6 to the participating member.

7 (I) Failing, after payment of a claim, to inform participating  
8 members, upon request by them, of the coverage under which  
9 payment has been made.

10 (J) Making known to claimants a practice of the cooperative  
11 corporation or interindemnity arrangement of appealing from  
12 arbitration awards in favor of claimants for the purpose of  
13 compelling them to accept settlements or compromises less than  
14 the amount awarded in arbitration.

15 (K) Delaying the investigation or payment of claims by  
16 requiring a claimant, or his or her physician, to submit a  
17 preliminary claim report, and then requiring the subsequent  
18 submission of formal proof of loss forms, both of which  
19 submissions contain substantially the same information.

20 (L) Failing to settle claims promptly, where liability has  
21 become apparent, under one portion of an interindemnity  
22 arrangement in order to influence settlements under other portions  
23 of the interindemnity arrangement.

24 (M) Failing to provide promptly a reasonable explanation of  
25 the basis relied on in the interindemnity arrangement, in relation  
26 to the facts of applicable law, for the denial of a claim or for the  
27 offer of a compromise settlement.

28 (N) Directly advising a claimant not to obtain the services of an  
29 attorney.

30 (O) Misleading a claimant as to the applicable statute of  
31 limitations.

32 (g) Notwithstanding any contrary provisions of Part 2  
33 (commencing with Section 12200) of Division 3 of Title 1 of the  
34 Corporations Code, it shall not be necessary to hold a meeting of  
35 members of the cooperative corporation for the purpose of electing  
36 directors if the bylaws provide the election may be held by  
37 first-class mail balloting. First-class mail balloting may also be  
38 used in conjunction with a meeting at which directors are to be  
39 elected and all mail ballots shall count toward establishing a

1 quorum for the meeting for the limited purpose of the issues set  
2 forth in the mail ballot. Directors shall be elected as follows:

3 (1) The candidates receiving the highest number of votes, up to  
4 the number of directors to be elected, by a specified date at least  
5 45 days but not later than 60 days after the ballots are first mailed,  
6 postage prepaid, to the members (or the date of a meeting of  
7 members held in conjunction therewith) shall be elected.

8 (2) In the event that no candidate receives a majority of the  
9 votes cast for a vacant office, a runoff election shall be held  
10 between the two candidates receiving the highest number of votes  
11 cast. The runoff election shall be held at least 45 days but not more  
12 than 60 days after the ballots for the election are mailed, postage  
13 prepaid. In the event that there is more than one office for which  
14 no candidate receives a majority of the votes cast, the candidates  
15 for the runoff shall be twice the number of vacant offices, and shall  
16 be those persons who received the highest number of votes  
17 therefor.

18 Those first-class mail ballots shall be kept on file for a period  
19 of three months after all vacant board positions have been filled,  
20 and shall be subject to inspection at any reasonable time by any  
21 members of the cooperative corporation.

22 (h) No officer, director, trustee, or member of the  
23 interindemnity arrangement or the cooperative corporation, or any  
24 entity in which that person has a material financial interest, shall  
25 enter into or renew any transaction or contract with the trust unless  
26 the material facts as to the transaction or contract and as to the  
27 interest of the person are fully disclosed to the participating  
28 members, and the transaction or contract is approved by an  
29 affirmative vote of at least 75 percent of the membership present  
30 at a meeting, in person or by proxy. If any ~~such~~ transaction or  
31 contract is to be submitted to members at a properly called  
32 meeting, the membership shall be notified of the meeting and of  
33 the transaction or contract by first-class mail, postage prepaid, at  
34 least 45 days prior to the meeting.

35 (i) Services provided to the trust pursuant to a delegated  
36 contractual arrangement shall be embodied in a written contract.  
37 Each written contract shall provide for reasonable consideration to  
38 the parties. In addition, each written contract shall be disclosed  
39 annually to participating members in a disclosure report  
40 containing the information described in subparagraph (H) of



paragraph (3) of subdivision (c). The disclosure report shall be sent to participating members by first-class mail, postage prepaid, and shall be mailed separately from any statements, records, or other documents. The disclosure requirements of this subdivision shall apply to all existing and future written contracts.

(j) Upon request of the Commissioner of Corporations, an interindemnity arrangement shall immediately forward to the commissioner a current list of participating members, including the names, addresses, and telephone numbers of those members.

(k) Notwithstanding any provision to the contrary, whenever the membership of a cooperative organization, organized pursuant to Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code and consisting solely of physicians and surgeons licensed in this state amounts to 2,000 or more members and the trust fund is at least forty million dollars (\$40,000,000), which is available to the public for malpractice claims or other claims authorized by this section, the cooperative is authorized to admit members without a contribution to that trust fund if assessments are charged to each of those members within the first 50 months in an amount equal to the amount of the contribution to the reserve fund that would otherwise be required.

SEC. 240. Section 1776 of the Insurance Code is amended to read:

1776. Any surplus line broker who willfully fails or refuses to report to the commissioner any insurance on subject matter located within this state placed under his or her name with nonadmitted insurers, or who, by ~~willfully~~ *willful* omission from the records required to be maintained by him or her for that purpose, attempts to evade the payment of taxes on any such insurance, is, in addition to being required to pay the tax, together with a penalty equal in amount to the tax, guilty of a misdemeanor.

It is a misdemeanor for any surplus line broker or special lines' surplus line broker to accept or pay directly or indirectly any consideration or remuneration for or in connection with the placing of insurance ~~which~~ *that*, if done by a person within this state, is governed by the provisions of this chapter, when ~~such~~ *the* placing was not done by a person licensed therefor pursuant to this chapter.

It is a misdemeanor for any agent or broker to solicit, negotiate, or effect any insurance governed by the provisions of this chapter



1 in nonadmitted insurers, except by and through a surplus line  
2 broker or special lines' surplus line broker licensed pursuant to this  
3 chapter. Except in the case of insurance specified in subdivision (b)  
4 of Section 1760.5, it is a misdemeanor for any surplus line broker  
5 or special lines' surplus line broker to accept, place, pay, or permit  
6 the payment of commission or other remuneration on insurance  
7 placed by him or her under authority of his or her license to any  
8 person other than one holding a license to act as an insurance agent,  
9 insurance broker, surplus line broker, or special lines' surplus line  
10 broker, except that ~~such~~ *the* business may be accepted by such  
11 surplus line broker or special lines' surplus line broker directly  
12 from an ~~assured~~ *insured* or other person who would likewise be  
13 entitled to place the ~~same~~ *business* directly with an admitted  
14 insurer without the solicitation, negotiation, or effecting thereof  
15 by an insurance agent or broker.

16 The commissioner may deny, suspend, or revoke any license  
17 issued pursuant to this code if he or she finds after notice and  
18 hearing in accordance with the procedure provided in Article 13  
19 (commencing with Section 1737) of Chapter 5 ~~of this part~~ that the  
20 licensee has violated any provisions of this section.

21 The permission granted in this chapter to place any insurance in  
22 a nonadmitted insurer shall not be deemed or construed to  
23 authorize any ~~such~~ insurer to do business in this state.

24 Placement activities of a licensed surplus line broker in  
25 accordance with this chapter, including, but not limited to, policy  
26 issuance, shall not be deemed or construed to be business done by  
27 the insurer in this state.

28 SEC. 241. Section 1861.025 of the Insurance Code is  
29 amended to read:

30 1861.025. A person is qualified to purchase a Good Driver  
31 Discount policy if he or she meets all of the following criteria:

32 (a) He or she has been licensed to drive a motor vehicle for the  
33 previous three years.

34 (b) During the previous three years, he or she has not done any  
35 of the following:

36 (1) Had more than one violation point count determined as  
37 provided by subdivision (a), (b), (c), (d), (e), (g), or (h) of Section  
38 12810 of the Vehicle Code, but subject to the following  
39 modifications:



For the purposes of this section, the driver of a motor vehicle involved in an accident for which he or she was principally at fault that resulted only in damage to property shall receive one violation point count, in addition to any other violation points ~~which~~ *that* may be imposed for this accident.

If, under Section 488 or 488.5, an insurer is prohibited from increasing the premium on a policy on account of a violation, that violation shall not be included in determining the point count of the person.

If a violation is required to be reported under Section 1816 of the Vehicle Code, or under Section 784 of the Welfare and Institutions Code, or any other provision requiring the reporting of a violation by a minor, the violation shall be included for the purposes of this section in determining the point count in the same manner as is applicable to adult violations.

(2) Had more than one dismissal pursuant to Section 1803.5 of the Vehicle Code that was not made confidential pursuant to Section 1808.7 of the Vehicle Code, in the 36-month period for violations that would have resulted in the imposition of more than one violation point count under paragraph (1) if the complaint had not been dismissed.

(3) Was the driver of a motor vehicle involved in an accident that resulted in bodily injury or in the death of any person and was principally at fault. The commissioner shall adopt regulations setting guidelines to be used by insurers for the ~~their~~ determination of fault for the purposes of this paragraph and paragraph (1).

(c) During the previous seven years, he or she has not been convicted of a violation of Section 23140, 23152, or 23153 of the Vehicle Code, a felony violation of Section 23550 or 23566, or former Section 23175 or, as those sections read on January 1, 1999, of the Vehicle Code, or a violation of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code.

(d) Any person who claims that he or she meets the criteria of subdivisions (a), (b), and (c) based entirely or partially on a driver's license and driving experience acquired anywhere other than in the United States or Canada is rebuttably presumed to be qualified to purchase a Good Driver Discount policy if he or she has been licensed to drive in the United States or Canada for at least the previous 18 months and meets the criteria of subdivisions (a), (b), and (c) for that period.

1 SEC. 242. Section 10089.45 of the Insurance Code is  
2 amended and renumbered to read:

3 ~~10089.45.~~

4 12975.9. (a) The Seismic Safety Account is hereby created as  
5 a special account within the Insurance Fund. Money in the account  
6 may be appropriated by the Legislature for the purposes of this  
7 section to fund the department and the Seismic Safety  
8 Commission. Assessments imposed on insurers as a prorated  
9 percentage of premiums earned on property exposures for both  
10 commercial and residential insurance policies relative to the  
11 aggregate premiums earned on those exposures by all insurers  
12 shall be deposited in the account. The premiums earned for  
13 property exposures shall be as stated on lines 4 and 5.1 of the  
14 annual statement filed by each insurer pursuant to Section 900.  
15 The assessments shall be set annually based on earned premiums  
16 reported for the next preceding year by the department and  
17 calculated so that the funds in the account shall be sufficient to  
18 fund appropriations for support of the Seismic Safety  
19 Commission, for the actual collection and administrative costs of  
20 the department, and for the maintenance of an adequate reserve.  
21 The department shall submit the proposed assessments to the  
22 Seismic Safety Commission for its review at a regularly scheduled  
23 meeting of the commission.

24 (b) No assessment shall be levied on insurers with less than one  
25 hundred thousand dollars (\$100,000) of annual direct premiums  
26 earned on property exposures for both commercial and residential  
27 insurance policies. The department may adjust this amount as  
28 necessary to minimize costs by excluding assessment amounts that  
29 are too small to justify the cost of assessment and collection or if  
30 assessment or collection is impractical.

31 (c) An insurer, in its discretion, may recover this assessment in  
32 an equitable fashion from the insured. The insurer, upon receipt of  
33 an invoice, shall transmit payment to the department for deposit in  
34 the Seismic Safety Account. Any deficiency or excess in the  
35 amount collected in relation to the appropriation authority for the  
36 commission and the department shall be accounted for in the  
37 subsequent annual fee calculation. Any balance remaining in the  
38 Seismic Safety Account at the end of the fiscal year shall be  
39 retained in the account and carried forward to the next fiscal year.

1 (d) Funds in the Seismic Safety Account shall be distributed,  
2 upon appropriation, to the Seismic Safety Commission for the  
3 support of the commission and to the department for the actual  
4 administrative costs incurred in collecting the assessments.

5 (e) The department shall report annually to the Legislature, the  
6 Seismic Safety Commission, and the Department of Finance on  
7 the assessment calculation methodology employed.

8 (f) This section shall remain in effect until July 1, 2007, and as  
9 of that date is repealed, unless a later enacted statute, that is enacted  
10 before July 1, 2007, deletes or extends that date.

11 SEC. 243. Section 10113.2 of the Insurance Code is amended  
12 to read:

13 10113.2. (a) This section applies to any person entering into  
14 or soliciting viatical settlements pursuant to Section 10113.1.

15 (b) (1) No person may enter into or solicit viatical settlements  
16 pursuant to Section 10113.1 unless that person has been licensed  
17 by the commissioner under this section. The person shall file an  
18 application for a license in the form prescribed by the  
19 commissioner, and the application shall be accompanied by a fee  
20 of two thousand eight hundred thirty-three dollars (\$2,833). The  
21 applicant shall provide any information the commissioner may  
22 require. The commissioner may issue a license, or deny the  
23 application if, in his or her discretion, it is determined that it is  
24 contrary to the interests of the public to issue a license to the  
25 applicant. The reasons for a denial shall be set forth in writing.

26 (2) Whenever it appears to the commissioner that it is contrary  
27 to the interests of the public for a person licensed pursuant to this  
28 section to continue to transact viatical settlements business, he or  
29 she shall issue a notice to the licensee stating the reasons therefor.  
30 If, after a hearing, the commissioner concludes that it is contrary  
31 to the interests of the public for the licensee to continue to transact  
32 viatical settlements business, he or she may revoke the person's  
33 license, or issue an order suspending the license for a period as  
34 determined by the commissioner. Any hearing conducted pursuant  
35 to this paragraph shall be in accordance with Chapter 5  
36 (commencing with Section 11500) of Part 1 of Division 3 of Title  
37 2 of the Government Code, except that the hearing may be  
38 conducted by administrative law judges chosen pursuant to  
39 Section 11502 or appointed by the commissioner, and the  
40 commissioner shall have the powers granted therein.

1 (3) Each licensee shall owe and pay in advance to the  
2 commissioner an annual renewal fee of one hundred  
3 seventy-seven dollars (\$177). This fee shall be for annual periods  
4 commencing on July 1 of each year and ending on June 30 of each  
5 year, and shall be due on each March 1 and shall be delinquent on  
6 and after each April 1.

7 (4) Any licensee that intends to discontinue transacting viatical  
8 settlements in this state shall so notify the commissioner, and shall  
9 surrender its license.

10 (c) A viatical settlements licensee shall file with the department  
11 a copy of all viatical settlement forms used in this state. No licensee  
12 may use any viatical settlement form in this state unless it has been  
13 approved by the commissioner. Any viatical settlement form filed  
14 with the commissioner shall be deemed approved if it has not been  
15 disapproved within 60 days of filing. The commissioner shall  
16 disapprove a viatical settlement form if, in his or her discretion, the  
17 form, or provisions contained therein, are contrary to the interests  
18 of the public, or otherwise misleading or unfair to the consumer.  
19 The commissioner may rescind an approval for any reason or on  
20 any basis that would have justified initial disapproval. In the case  
21 of disapproval or rescission of approval, the licensee may, within  
22 15 days of notice of the disapproval or rescission, request a hearing  
23 before the commissioner or his or her designee, and the hearing  
24 shall be held within 30 days of the request.

25 (d) Viatical settlements licensees shall be required to disclose  
26 or advise any applicant for a viatical settlement, at the time of  
27 solicitation for the viatical settlement, of all of the following:

28 (1) Possible alternatives to viatical settlements for persons with  
29 catastrophic or life-threatening illness, including, but not limited  
30 to, accelerated benefits options that may be offered by the life  
31 insurer.

32 (2) Tax consequences that may result from entering into a  
33 viatical settlement.

34 (3) Consequences for interruption of public assistance as  
35 provided by information provided by the State Department of  
36 Health Services and the State Department of Social Services under  
37 Section 11022 of the Welfare and Institutions Code.

38 (e) All medical information solicited or obtained by any person  
39 soliciting or entering into a viatical settlement is subject to Article

1 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of  
2 Division 1, concerning confidentiality of medical information.

3 (f) The commissioner may adopt rules and regulations  
4 reasonably necessary to govern viatical settlements and  
5 transactions and shall adopt regulations to address those conflicts  
6 of interest that may arise, including referrals by viatical settlement  
7 brokers to viatical settlement providers who have patterns of  
8 unreasonable payments to viators. This authority includes, but is  
9 not limited to, regulation of discount rates used to determine the  
10 amount paid in exchange for assignment, transfer, sale, devise, or  
11 bequest of a death benefit under a life insurance policy, and  
12 regulations restricting the period of time within which a life or  
13 disability agent is prohibited from charging or accepting a fee or  
14 commission for viaticating a policy previously sold by that agent.  
15 In adopting those regulations, the commissioner shall consider the  
16 period of time applicable to that prohibition. The prohibition does  
17 not apply to group policies or certificates.

18 (g) The commissioner may, whenever he or she deems it  
19 reasonably necessary to protect the interests of the public, examine  
20 the business and affairs of any licensee or applicant for a license.  
21 The commissioner shall have the authority to order any licensee or  
22 applicant to produce any records, books, files, or other information  
23 as is reasonably necessary to ascertain whether or not the licensee  
24 or applicant is acting or has acted in violation of the law or  
25 otherwise contrary to the interests of the public. The expenses  
26 incurred in conducting any examination shall be paid by the  
27 licensee or applicant.

28 (h) The commissioner may investigate the conduct of any  
29 licensee, its officers, employees, agents, or any other person  
30 involved in the business of the licensee, whenever the  
31 commissioner has reason to believe that the licensee may have  
32 acted, or may be acting, in violation of the law, or otherwise  
33 contrary to the interests of the public. The commissioner may  
34 initiate an investigation on his or her own, or upon a complaint  
35 filed by any other person.

36 (i) The commissioner may issue orders to licensees whenever  
37 he or she determines that it is reasonably necessary to ensure or  
38 obtain compliance with this section, or Section 10113.1. This  
39 authority includes, but is not limited to, orders directing a licensee  
40 to cease and desist in any practice that is in violation of this section,

1 or Section 10113.1, or otherwise contrary to the interests of the  
2 public. Any licensee to which an order pursuant to this subdivision  
3 is issued may, within 15 days of receipt of that order, request a  
4 hearing at which the licensee may challenge the order.

5 (j) The commissioner may, after notice and a hearing at which  
6 it is determined that a licensee has violated this section or Section  
7 10113.1 or any order issued pursuant to this section, order the  
8 licensee to pay a monetary penalty of up to ten thousand dollars  
9 (\$10,000), which may be recovered in a civil action. Any hearing  
10 conducted pursuant to this subdivision shall be in accordance with  
11 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
12 3 of Title 2 of the Government Code, except that the hearing may  
13 be conducted by administrative law judges chosen pursuant to  
14 Section 11502 or appointed by the commissioner, and the  
15 commissioner shall have the powers granted therein.

16 (k) Each licensee shall file with the commissioner on or before  
17 March 1 of each year an annual statement in the form prescribed  
18 by the commissioner. The information that the commissioner may  
19 require in the annual statement shall include, but not be limited to,  
20 the data required to satisfy the commissioner's report to the  
21 Legislature due on or before December 1, 1994.

22 (l) No person who is not a resident of California may receive  
23 or maintain a license unless a written designation of an agent for  
24 service ~~or~~ of process is filed and maintained with the  
25 commissioner. The provisions of Article 3 (commencing with  
26 Section 1600) of Chapter 4 of Part 2 shall apply to viatical  
27 settlements licensees as if they were foreign insurers, their license  
28 a certificate of authority, and the viatical settlements a policy, and  
29 the commissioner may modify the agreement set forth in Section  
30 1604 accordingly.

31 (m) No person licensed pursuant to this section shall engage in  
32 any false or misleading advertising, solicitation, or practice. The  
33 provisions of Article 6 (commencing with Section 780) and  
34 Article 6.5 (commencing with Section 790) of Chapter 1 of Part  
35 2 shall apply to viatical settlements licensees as if they were  
36 insurers, their license a certificate of authority or producer's  
37 license, and the viatical settlements a policy, and the commissioner  
38 shall liberally construe these provisions so as to protect the  
39 interests of the public.



1 (n) Any person who enters into a viatical settlement with a  
2 viatical settlements licensee shall have the absolute right to rescind  
3 the settlement within 15 days of execution of the settlement, and  
4 any waiver or settlement language contrary to this subdivision  
5 shall be void.

6 (o) A violation of this section is a misdemeanor.

7 SEC. 244. Section 10133.56 of the Insurance Code is  
8 amended to read:

9 10133.56. (a) A health insurer that enters into a contract with  
10 a professional or institutional provider to provide services at  
11 alternative rates of payment pursuant to Section 10133 shall, at the  
12 request of an insured, arrange for the completion of covered  
13 services by a terminated provider, if the insured is undergoing a  
14 course of treatment for any of the following conditions:

15 (1) An acute condition. An acute condition is a medical  
16 condition that involves a sudden onset of symptoms due to an  
17 illness, injury, or other medical problem that requires prompt  
18 medical attention and that has a limited duration. Completion of  
19 covered services shall be provided for the duration of the acute  
20 condition.

21 (2) A serious chronic condition. A serious chronic condition is  
22 a medical condition due to a disease, illness, or other medical  
23 problem or medical disorder that is serious in nature and that  
24 persists without full cure or worsens over an extended period of  
25 time or requires ongoing treatment to maintain remission or  
26 prevent deterioration. Completion of covered services shall be  
27 provided for a period of time necessary to complete a course of  
28 treatment and to arrange for a safe transfer to another provider, as  
29 determined by the health insurer in consultation with the insured  
30 and the terminated provider and consistent with good professional  
31 practice. Completion of covered services under this paragraph  
32 shall not exceed 12 months from the contract termination date.

33 (3) A pregnancy. A pregnancy is the three trimesters of  
34 pregnancy and the immediate postpartum period. Completion of  
35 covered services shall be provided for the duration of the  
36 pregnancy.

37 (4) A terminal illness. A terminal illness is an incurable or  
38 irreversible condition that has a high probability of causing death  
39 within one year or less. Completion of covered services shall be  
40 provided for the duration of a terminal illness.

1 (5) The care of a newborn child between birth and age 36  
2 months. Completion of covered services under this paragraph shall  
3 not exceed 12 months from the contract termination date.

4 (6) Performance of a surgery or other procedure that has been  
5 recommended and documented by the provider to occur within  
6 180 days of the contract's termination date.

7 (b) The insurer may require the terminated provider whose  
8 services are continued beyond the contract termination date  
9 pursuant to this section, to agree in writing to be subject to the same  
10 contractual terms and conditions that were imposed upon the  
11 provider prior to termination, including, but not limited to,  
12 credentialing, hospital privileging, utilization review, peer review,  
13 and quality assurance requirements. If the terminated provider  
14 does not agree to comply or does not comply with these contractual  
15 terms and conditions, the insurer is not required to continue the  
16 provider's services beyond the contract termination date.

17 (c) Unless otherwise agreed upon between the terminated  
18 provider and the insurer or between the terminated provider and  
19 the provider group, the agreement shall be construed to require a  
20 rate and method of payment to the terminated provider, for the  
21 services rendered pursuant to this section, that is the same as the  
22 ~~rates~~ *rate* and method of payment for the same services while  
23 under contract with the insurer and at the time of termination. The  
24 provider shall accept the reimbursement as payment in full, and  
25 shall not bill the insured for any amount in excess of the  
26 reimbursement rate, with the exception of copayments and  
27 deductibles pursuant to subdivision (e).

28 (d) Notice as to how an insured may request completion of  
29 covered services pursuant to this section shall be provided in any  
30 insurer evidence of coverage and disclosure form issued after  
31 March 31, 2004. An insurer shall provide a written copy of this  
32 information to its contracting providers and provider groups. An  
33 insurer shall also provide a copy to its insureds upon request.

34 (e) The payment of copayments, deductibles, or other ~~cost~~  
35 ~~sharing~~ *cost-sharing* components by the insured during the period  
36 of completion of covered services with a terminated provider shall  
37 be the same copayments, deductibles, or other ~~cost-sharing~~  
38 *cost-sharing* components that would be paid by the insured when  
39 receiving care from a provider currently contracting with the  
40 insurer.

(f) If an insurer delegates the responsibility of complying with this section to its contracting entities, the insurer shall ensure that the requirements of this section are met.

(g) For the purposes of this section:

(1) “Provider” means a person who is a licentiate as defined in Section 805 of the Business and Professions Code or a person licensed under Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code.

(2) “Terminated provider” means a provider whose contract to provide services to insureds is terminated or not renewed by the insurer or one of the insurer’s contracting provider groups. A terminated provider is not a provider who voluntarily leaves the insurer or contracting provider group.

(3) “Provider group” includes a medical group, independent practice association, or any other similar organization.

(h) This section shall not require an insurer or provider group to provide for the completion of covered services by a provider whose contract with the insurer or provider group has been terminated or not renewed for reasons relating to medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Professions Code, or fraud or other criminal activity.

~~(i)~~

(i) This section shall not require an insurer to cover services or provide benefits that are not otherwise covered under the terms and conditions of the insurer contract.

~~(k)~~

(j) The provisions contained in this section are in addition to any other responsibilities of insurers to provide continuity of care pursuant to this chapter. Nothing in this section shall preclude an insurer from providing continuity of care beyond the requirements of this section.

SEC. 245. Section 10133.8 of the Insurance Code is amended to read:

10133.8. (a) The commissioner shall, on or before January 1, 2006, promulgate regulations applicable to all individual and group policies of health insurance establishing standards and requirements to provide insureds with appropriate access to translated materials and language assistance in obtaining covered benefits. A health insurer that participates in the Healthy Families

1 Program may assess the ~~Health~~ *Healthy* Families Program  
2 enrollee population separately from the remainder of its  
3 population for purposes of subparagraph (A) of paragraph (3) of  
4 subdivision (b). An insurer that chooses to separate its Healthy  
5 Families Program enrollment from the remainder of its population  
6 shall treat the Healthy Families Program population separately for  
7 purposes of determining whether subparagraph (A) of paragraph  
8 (3) of subdivision (b) is applicable and shall also treat the Healthy  
9 Families Program population separately for purposes of applying  
10 the percentage and numerical thresholds in subparagraph (A) of  
11 paragraph (3) of subdivision (b).

12 (b) The regulations described in subdivision (a) shall include  
13 the following:

14 (1) A requirement to conduct an assessment of the needs of the  
15 insured group, pursuant to this subdivision.

16 (2) Requirements for surveying the language preferences and  
17 assessment of linguistic needs of insureds within one year of the  
18 effective date of the regulations that permit health insurers to  
19 utilize various survey methods, including, but not limited to, the  
20 use of existing enrollment and renewal processes, newsletters, or  
21 other mailings. Health insurers shall update the linguistic needs  
22 assessment, demographic profile, and language translation  
23 requirements every three years. However, the regulations may  
24 provide that the surveys and assessments by insurers of  
25 supplemental insurance products may be conducted less  
26 frequently than three years if the commissioner determines that the  
27 results are unlikely to ~~effect~~ *affect* the translation requirements.

28 (3) Requirements for the translation of vital documents that  
29 include the following:

30 (A) A requirement that all vital documents, as defined pursuant  
31 to subparagraph ~~B~~ *(B)*, be translated into an indicated language, as  
32 follows:

33 (i) A health insurer with an insured population of 1,000,000 or  
34 more shall translate vital documents into the top two languages  
35 other than English as determined by the needs assessment pursuant  
36 to paragraph (2) of subdivision (b) and any additional languages  
37 when 0.75 percent or 15,000 of the insured population, whichever  
38 number is less, indicates in the needs assessment pursuant to  
39 paragraph (2) of subdivision (b) a preference for written materials  
40 in that language.

(ii) A health insurer with an insured population of 300,000 or more but less than 1,000,000 shall translate vital documents into the top one language other than English as determined by the needs assessment pursuant to paragraph (2) of subdivision (b) and any additional languages when 1 percent or 6,000 of the insured population, whichever number is less, indicates in the needs assessment pursuant to paragraph (2) of subdivision (b) a preference for written materials in that language.

(iii) A health insurer with an insured population of less than 300,000 shall translate vital documents into a language other than English when 3,000 or more or ~~five~~ 5 percent of the insured population, whichever number is less, indicates in the needs assessment pursuant to paragraph (2) of subdivision (b) a preference for written materials in that language.

(B) Specification of vital documents produced by the insurer that are required to be translated. The specification of vital documents shall not exceed that of the Department of Health and Human Services (~~FHHS~~) (*HHS*) Office of Civil Rights (OCR) Policy Guidance (65 Federal Register 52762 (August 30, 2000)), but shall include all of the following:

(i) Applications.

(ii) Consent forms.

(iii) Letters containing important information regarding eligibility or participation criteria.

(iv) Notices pertaining to the denial, reduction, modification, or termination of services and benefits, the right to file a complaint or appeal.

(v) Notices advising ~~Limited—English—proficient~~ *limited-English-proficient* persons of the availability of free language assistance and other outreach materials that are provided to insureds.

(vi) Translated documents shall not include an insurer's explanation of benefits or similar claim processing information that are sent to insureds unless the document requires a response by the insured.

(C) For those documents described in subparagraph (B) that are not standardized but contain insured specific information, health insurers shall not be required to translate the documents into the threshold languages identified by the needs assessment pursuant to paragraph (2) of subdivision (b) but rather shall include with the

1 document a written notice of the availability of interpretation  
2 services in the threshold languages identified by the needs  
3 assessment pursuant to paragraph (2) of subdivision (b).

4 (i) Upon request, the insured shall receive a written translation  
5 of those documents. The health insurer shall have up to, but not to  
6 exceed, 21 days to comply with the insured's request for a written  
7 translation. If an enrollee requests a translated document, all  
8 timeframes and deadlines requirements related to the documents  
9 that apply to the health insurer and insureds under the provisions  
10 of this chapter and under any regulations adopted pursuant to this  
11 chapter shall begin to run upon the health insurer's issuance of the  
12 translated document.

13 (ii) For appeals that require expedited review and response in  
14 accordance with the statutes and regulations of this chapter. ~~The,~~  
15 *the* health insurer may satisfy this requirement by providing notice  
16 of the availability and access to oral interpretation services.

17 (D) A requirement that health insurers advise ~~Limited-English~~  
18 ~~proficient~~ *limited-English-proficient* insureds of the availability  
19 of interpreter services.

20 (4) Standards to ensure the quality and accuracy of the written  
21 translation and that a translated document meets the same  
22 standards required for the English version of the document. The  
23 English language documents shall determine the rights and  
24 obligations of the parties, and the translated documents shall be  
25 admissible in evidence only if there is a dispute regarding a  
26 substantial difference in the material terms and conditions of the  
27 English language document and the translated document.

28 (5) Requirements for individual access to interpretation  
29 services.

30 (6) Standards to ensure the quality and timeliness of oral  
31 interpretation services provided by health insurers.

32 (c) In developing the regulations, standards, and requirements  
33 described in this section, the commissioner shall consider the  
34 following:

35 (1) Publications and standards issued by federal agencies,  
36 including the Culturally and Linguistically Appropriate Services  
37 (CLAS) in Health Care issued by the United States Department of  
38 Health and Human Services Office of Minority Health in  
39 December 2000, and the Department of Health and Human

1 Services ~~(FHS)~~ (HHS) Office of Civil Rights (OCR) Policy  
2 Guidance 65 (65 Federal Register 52762 (August 30, 2000)).

3 (2) Other cultural and linguistic requirements under state  
4 programs, including the Medi-Cal Managed Care Policy Letters,  
5 cultural and linguistic requirements imposed by the State  
6 Department of Health Services on health care service plans that  
7 contract to provide Medi-Cal managed care services, and cultural  
8 and linguistic requirements imposed by the Managed Risk  
9 Medical Insurance Board on health insurers that contract to  
10 provide services in the Healthy Families Program.

11 (3) Standards adopted by other states pertaining to language  
12 assistance requirements for health insurers.

13 (4) Standards established by California or nationally  
14 recognized accrediting, certifying, or licensing organizations and  
15 medical and health care interpreter professional associations  
16 regarding interpretation services.

17 (5) Publications, guidelines, reports, and recommendations  
18 issued by state agencies or advisory committees, such as the report  
19 card to the public on the comparative performance of plans and  
20 reports on cultural and linguistic services issued by the Office of  
21 Patient Advocate and the report to the Legislature from the Task  
22 Force on Culturally and Linguistically Competent Physicians and  
23 Dentists required pursuant to Section 852 of the Business and  
24 Professions Code.

25 (6) Examples of best practices relating to language assistance  
26 services by health care providers and health insurers that contract  
27 for alternative rates of payment with providers, including existing  
28 practices.

29 (7) Information gathered from complaints to the commissioner  
30 and consumer assistance help lines regarding language assistance  
31 services.

32 (8) The cost of compliance and the availability of translation  
33 and interpretation services and professionals.

34 (9) Flexibility to accommodate variations in networks and  
35 method of service delivery. The commissioner shall allow for  
36 health insurer flexibility in determining compliance with the  
37 standards for oral and written interpretation services.

38 (d) In designing the regulations, the commissioner shall  
39 consider all other relevant guidelines in an effort to accomplish  
40 maximum accessibility within a cost-efficient system of



1 indemnification. The commissioner shall seek public input from  
2 a wide range of interested parties.

3 (e) Services, verbal communications, and written materials  
4 provided by or developed by the health insurers that contract for  
5 alternative rates of payment with providers, shall comply with the  
6 standards developed under this section.

7 (f) Beginning on January 1, 2008, the department shall report  
8 biennially to the Legislature regarding health insurer compliance  
9 with the standards established by this section, including results of  
10 compliance audits made in conjunction with other audits and  
11 reviews. The department shall also ~~utilized~~ *utilize* the reported  
12 information to make recommendations for changes that further  
13 enhance standards pursuant to this section. The commissioner  
14 shall work to ensure that *the* biennial reports required by this  
15 section, and the data collected for the reports, do not require  
16 duplicative or conflicting data collection with other reports ~~as that~~  
17 may be required by government-sponsored programs. The  
18 commissioner may also delay or otherwise phase in  
19 implementation of the standards and requirements in recognition  
20 of costs and availability of translation and interpretation services  
21 and professionals.

22 (g) Nothing in this section shall prohibit a government  
23 ~~purchaser~~ *purchasers* from including in their contracts additional  
24 translation or interpretation requirements, to meet the linguistic  
25 and cultural needs, beyond those set forth pursuant to this section.

26 SEC. 246. Section 10178.4 of the Insurance Code is amended  
27 to read:

28 10178.4. (a) When a contracting agent sells, leases, or  
29 transfers a health ~~providers~~ *provider's* contract to a payor, the  
30 rights and obligations of the provider shall be governed by the  
31 underlying contract between the health care provider and the  
32 contracting agent.

33 (b) For purposes of this section, the following terms shall have  
34 the following meanings:

35 (1) "Contracting agent" has the meaning set forth in paragraph  
36 (2) of subdivision (d) of Section 10178.3.

37 (2) "Payor" has the meaning set forth in paragraph (3) of  
38 subdivision (d) of Section 10178.3.

39 SEC. 247. Section 10764 of the Insurance Code is amended  
40 to read:



10764. (a) On and after January 1, 2006, except as provided in subdivision (b), health insurers shall not offer or sell the following insurance policies to employers providing coverage to employees pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code:

(1) A Medicare supplement, ~~vision-only, dental-only, or Champus-supplement~~ *vision only, dental only, or Champus supplement* insurance policy.

(2) A hospital indemnity, ~~accident-only~~ *accident only*, or specified disease insurance policy that pays benefits on a fixed benefit, cash-payment-only basis.

(b) However, an insurer may sell one or more of the types of policies listed in paragraph (1) or (2) of subdivision (a) if the employer has purchased or purchases concurrently health care coverage meeting the standards of Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code.

(c) If an employer, as defined in Section ~~2022.6~~ 2122.6 of the Labor Code, chooses to purchase more than one means of coverage, the employer may require a higher level of contribution from potential enrollees so long as one means of coverage meets the standards of this section.

(d) An employer, as defined in Section 2122.6 of the Labor Code, may purchase health care coverage that includes additional out-of-pocket expenses, such as coinsurance or deductibles. In reviewing the share-of-premium, deductibles, copayments, and other out-of-pocket costs paid by insureds, the department shall consider those permitted by the board under Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code.

(e) Notwithstanding subdivision (b), a medium employer, as defined in Section 2122.4 of the Labor Code, may require an enrollee to contribute more than 20 percent of the cost of coverage if both of the following apply:

(1) The coverage provided by the employer includes coverage for dependents.

(2) The employer contributes an amount that exceeds 80 percent of the cost of the coverage for an individual employee.

(f) The policy includes prescription drug coverage, which shall be subject to coinsurance, deductibles, and other out-of-pocket costs consistent with *subdivision* (d).

1 SEC. 248. Section 12144 of the Insurance Code is amended  
2 to read:

3 12144. Motor club service is the rendering or procuring of, or  
4 reimbursement for, any of the services defined in this chapter to  
5 any person in connection with the ownership, operation, use, or  
6 maintenance of a motor vehicle, including a vacation trailer, house  
7 or otherwise, or a boat capable of ordinary transportation on a  
8 trailer and its trailer, by ~~such~~ *the* person upon any of the following  
9 considerations:

10 (a) ~~Such~~ *The* person is or will become a member of the club  
11 rendering or furnishing the service.

12 (b) ~~Such~~ *The* person is or will become in any manner affiliated  
13 with ~~such~~ *the* club.

14 (c) ~~Such~~ *The* person is or will become entitled to receive  
15 membership or other motor club service from the club by virtue of  
16 any agreement or understanding with any ~~such~~ club.

17 This section shall not authorize a motor club to furnish any  
18 service on a reimbursement basis ~~which~~ *that* constitutes the  
19 transaction of insurance. The commissioner may make reasonable  
20 rules and regulations specifying services ~~which~~ *that* constitute the  
21 transaction of insurance for the purposes of this part and which  
22 may not be offered on a reimbursement basis. ~~Such rules~~ *Rules* and  
23 regulations shall be adopted, amended, and repealed in accordance  
24 with ~~the procedure provided in Chapter 4.5~~ 3.5 (commencing with  
25 Section ~~11371~~ 11340) of Part 1 of Division 3 of Title 2 of the  
26 Government Code.

27 SEC. 249. Section 12671 of the Insurance Code is amended  
28 to read:

29 12671. As used in this part, *the following terms have the*  
30 *following meanings:*

31 (a) “Group policy” means a group health insurance policy  
32 providing medical, hospital, surgical, major medical, or  
33 comprehensive medical coverage issued by an insurer, a group  
34 contract issued by a hospital service corporation, or medical,  
35 hospital, surgical, major medical, or comprehensive medical  
36 coverage otherwise provided by a policyholder to its employees or  
37 members, except for self-insurance programs provided by  
38 employers that are not exempt from ERISA, as specified in  
39 subdivision (i). For the purposes of this part, a group policy not



1 having an established annual renewal date shall be considered  
2 renewed on each anniversary of its effective date.

3 (b) “Conversion coverage” means health insurance benefits  
4 providing hospital, surgical, major medical, or comprehensive  
5 medical coverage issued to an individual under a converted policy.

6 (c) “Converted policy” means a policy or contract providing  
7 conversion coverage issued by an insurance company or by a  
8 hospital service corporation, or individual hospital, surgical,  
9 major medical, or comprehensive medical coverage otherwise  
10 provided by a policyholder to its employees or members.

11 (d) “Insurer” means the entity issuing a group policy, an  
12 individual or converted policy, a hospital service contract or an  
13 employer or employee organization otherwise providing medical,  
14 hospital, surgical, major medical, or comprehensive medical  
15 coverage to its employees or members.

16 (e) “Insurance” refers to health insurance, major medical, or  
17 comprehensive coverage paid by premium or contribution under  
18 a group policy, a hospital service contract, or as otherwise  
19 provided by a policyholder to its employees or members other than  
20 by self-insuring except in the case of a plan that is exempt from  
21 ERISA, but does include an employer plan that is exempt from  
22 ERISA as specified in subdivision (i). “Insurance” does not  
23 include any of the following:

24 (1) Coverage provided solely as an accrued liability or by  
25 reason of a disability extension.

26 (2) Medicare supplement insurance.

27 (3) Vision-only insurance.

28 (4) Dental-only insurance.

29 (5) CHAMPUS supplement insurance.

30 (6) Hospital indemnity insurance.

31 (7) Accident-only insurance.

32 (8) Short-term limited duration health insurance. “Short-term  
33 limited duration health insurance” means individual health  
34 insurance coverage that is offered by a licensed insurance  
35 company, intended to be used as transitional or interim coverage  
36 to remain in effect for not more than 185 days, that cannot be  
37 renewed or otherwise continued for more than one additional  
38 period of not more than 185 days, and that is not intended or  
39 marketed as health insurance coverage, a health care service plan,  
40 or a health maintenance organization subject to guaranteed

1 issuance or guaranteed renewal pursuant to relevant state or  
2 federal law.

3 (9) Specified disease insurance that does not pay benefits on a  
4 fixed benefit, cash payment only basis.

5 (f) “Policyholder” means the holder of a group policy issued  
6 by an insurer, a holder of a group contract issued by a hospital  
7 service corporation or an employer, employee association, or  
8 other entity otherwise providing medical, hospital, surgical, major  
9 medical, or comprehensive medical coverage on a group basis to  
10 its employees or members.

11 (g) “Premium” means contribution or other consideration paid  
12 or payable for coverage under a group policy or converted policy.

13 (h) “Medicare” means Title XVIII of the United States Social  
14 Security Act as added by the Social Security Amendments of 1965  
15 or as later amended or superseded.

16 (i) “Employer plan that is exempt from ERISA” means any  
17 employer plan that, pursuant to the provisions of Section 1003 of  
18 Title 29 of the United States Code, is not covered by or that is  
19 exempt from the provisions of Subchapter I (commencing with  
20 Section 1001) of Chapter 18 of Title 29 of the United States Code,  
21 except that, in the case of a governmental plan, it only includes a  
22 self-insured governmental plan as defined in subdivision ~~(h)~~ (j).

23 (j) “Self-insured governmental plan” means a self-insured  
24 plan established or maintained for its employees by any public  
25 entity, as defined in Section 811.2 of the Government Code, ~~which~~  
26 *that* is a governmental plan as defined in subdivision (32) of  
27 Section 1002 of Title 29 of the United States Code.

28 SEC. 250. Section 12693.55 of the Insurance Code is  
29 amended to read:

30 12693.55. (a) Prior to implementation of the Health  
31 Insurance Act of 2003, the board shall, to the maximum extent  
32 permitted by federal law, ensure that persons who are either  
33 covered or eligible for *the Healthy Families Program* will retain  
34 the same amount, duration, and scope of benefits that they  
35 currently receive or are currently eligible to receive, including  
36 dental, vision, and mental benefits. The board shall consult with  
37 a stakeholder group that shall include all of the following:

38 (1) Consumer advocate groups that represent persons eligible  
39 for *the Healthy Families Program*.

40 (2) Organizations that represent persons with disabilities.

1 (3) Representatives of public hospitals, clinics, safety net  
2 providers, and other providers.

3 (4) Labor organizations that represent employees whose  
4 families include persons likely to be eligible for *the Healthy*  
5 *Families Program*.

6 (5) Employer organizations.

7 (b) The board shall develop a *Healthy Families Program*  
8 premium assistance program for eligible individuals as permitted  
9 under federal law to reduce state costs and maximize federal  
10 financial participation by providing health care coverage to  
11 eligible individuals through a combination of available  
12 employer-based coverage and a wraparound benefit that covers  
13 any gap between the employer-based coverage and the benefits  
14 required by this part.

15 (c) The board shall do all of the following in implementing the  
16 premium assistance program:

17 (1) Require eligible individuals with access to employer-based  
18 coverage to enroll themselves or their ~~family~~ *families* or both in the  
19 available employer-based coverage if the board finds that  
20 enrollment in that coverage is cost-effective.

21 (2) Promptly reimburse an eligible individual for his or her  
22 share of premium cost under the employer-based coverage, minus  
23 any contribution that an individual would be required to pay  
24 pursuant to Section 12693.43.

25 (d) If federal approval of a premium assistance program cannot  
26 be obtained, the board in consultation with the stakeholder group  
27 shall explore alternatives that provide that persons who are either  
28 covered or eligible for *the Healthy Families Program* retain the  
29 same amount, duration, and scope of benefits that they currently  
30 receive or are currently eligible to receive, including vision,  
31 dental, and mental health benefits.

32 SEC. 251. Section 12975.7 of the Insurance Code is amended  
33 to read:

34 12975.7. (a) All moneys received by the commissioner in  
35 payment of lawful fees or reimbursements pursuant to this code  
36 shall be transmitted to the ~~State~~ Treasurer to be deposited in the  
37 State Treasury to the credit of the Insurance Fund. Unless specified  
38 in this code to be deposited in a different fund, all moneys received  
39 by the commissioner in fines, penalties, assessments, costs, or

1 other sanctions shall be transmitted to the State Treasury for  
2 deposit in the General Fund.

3 (b) The money in the Insurance Fund received from the  
4 commissioner pursuant to this section is hereby appropriated to  
5 pay the refunds authorized by this code.

6 (c) The balance of the money in the Insurance Fund shall be  
7 used for the purposes specified in Section ~~10089.45~~ 12975.9, for  
8 the support of the Department of Insurance as authorized by the  
9 Budget Act, and for related ~~cash flow~~ *cashflow* needs.

10 SEC. 252. Section 12975.8 of the Insurance Code is amended  
11 to read:

12 12975.8. (a) The Insurance Fund shall, in addition to the  
13 funds specified in Section 12975.7, consist of all of the following:

14 (1) All moneys appropriated to the fund in accordance with  
15 law.

16 (2) All moneys deposited into the State Treasury from any  
17 source whatever in payment of lawful fees or reimbursements  
18 collected by the Department of Insurance.

19 (3) The balance remaining in the Insurance Fund at the end of  
20 the fiscal year, whether the moneys received are from an  
21 appropriation, fees, or from reimbursements for services rendered.

22 (b) (1) All moneys in the Insurance Fund credited to the  
23 Seismic Safety Account shall be subject to an annual appropriation  
24 each fiscal year for the purposes specified in Section ~~10089.45~~  
25 12975.9.

26 (2) All other moneys in the Insurance Fund shall be subject to  
27 an annual appropriation each fiscal year for the support of the  
28 Department of Insurance.

29 (3) If the current cash balance in the Seismic Safety Account  
30 is not adequate to fund the amount appropriated from it in the  
31 annual Budget Act, the Insurance Fund, upon enactment of the  
32 Budget Act, shall loan to the account the amount of the  
33 appropriation, and one half of this amount shall be transferred to  
34 the Seismic Safety Commission. The second half of the  
35 appropriated amount shall be transferred to the Seismic Safety  
36 Commission from the Seismic Safety Account on or before  
37 December 31 of each year. This loan shall be repaid by revenues  
38 collected pursuant to Section ~~10089.45~~ 12975.9.



(c) Any balance remaining in the Insurance Fund at the end of the fiscal year may be carried forward to the next succeeding fiscal year.

(d) Whenever the balance in the Insurance Fund is not sufficient to cover cash flow in the payment of authorized expenditures, the department may borrow ~~such~~ funds as may be necessary from whatever source and under terms and conditions as may be determined by the Director of Finance. Repayment shall be made from revenues received by the department for the same fiscal year for which the loan is made.

SEC. 253. Section 98.2 of the Labor Code is amended to read:

98.2. (a) Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the superior court, where the appeal shall be heard de novo. A copy of the appeal request shall be served upon the Labor Commissioner by the appellant. For purposes of computing the 10-day period after service, Section 1013 of the Code of Civil Procedure ~~shall be~~ is applicable.

(b) Whenever an employer files an appeal pursuant to this section, the employer shall post an undertaking with the reviewing court in the amount of the order, decision, or award. The undertaking shall consist of an appeal bond issued by a licensed surety or a cash deposit with the court in the amount of the order, decision, or award. The employer shall provide written notification to the other parties and the Labor Commissioner of the posting of the undertaking. The undertaking shall be on the condition that, if any judgment is entered in favor of the employee, the employer shall pay the amount owed pursuant to the judgment, and if the appeal is withdrawn or dismissed without entry of judgment, the employer shall pay the amount owed pursuant to the order, decision, or award of the Labor Commissioner unless the parties have executed a settlement agreement for payment of some other amount, in which case the employer shall pay the amount that the employer is obligated to pay under the terms of the settlement agreement. If the employer fails to pay the amount owed within 10 days of entry of the judgment, dismissal, or withdrawal of the appeal, or the execution of a settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount owed exceeds the undertaking, ~~shall be~~ is forfeited to the employee.

1 (c) If the party seeking review by filing an appeal to the  
2 superior court is unsuccessful in the appeal, the court shall  
3 determine the costs and reasonable attorney's fees incurred by the  
4 other parties to the appeal, and assess that amount as a cost upon  
5 the party filing the appeal. An employee is successful if the court  
6 awards an amount greater than zero.

7 (d) If no notice of appeal of the order, decision, or award is filed  
8 within the period set forth in subdivision (a), the order, decision,  
9 or award shall, in the absence of fraud, be deemed the final order.

10 (e) The Labor Commissioner shall file, within 10 days of the  
11 order becoming final pursuant to subdivision (d), a certified copy  
12 of the final order with the clerk of the superior court of the  
13 appropriate county unless a settlement has been reached by the  
14 parties and approved by the Labor Commissioner. Judgment shall  
15 be entered immediately by the court clerk in conformity therewith.  
16 The judgment so entered ~~shall have~~ *has* the same force and effect  
17 as, and ~~shall be~~ *is* subject to all of the provisions of law relating to,  
18 a judgment in a civil action, and may be enforced in the same  
19 manner as any other judgment of the court in which it is entered.  
20 Enforcement of the judgment shall receive court priority.

21 (f) (1) In order to ensure that judgments are satisfied, the  
22 Labor Commissioner may serve upon the judgment debtor,  
23 personally or by first-class mail at the last known address of the  
24 judgment debtor listed with the division, a form similar to, and  
25 requiring the reporting of the same information as, the form  
26 approved or adopted by the Judicial Council for purposes of  
27 subdivision (a) of Section 116.830 of the Code of Civil Procedure  
28 to assist in identifying the nature and location of any assets of the  
29 judgment debtor.

30 (2) The judgment debtor shall complete the form and cause it  
31 to be delivered to the division at the address listed on the form  
32 within 35 days after the form has been served on the judgment  
33 debtor, unless the judgment has been satisfied. In case of willful  
34 failure by the judgment debtor to comply with this subdivision, the  
35 division or the judgment creditor may request the court to apply  
36 the sanctions provided in Section 708.170 of the Code of Civil  
37 Procedure.

38 (g) Notwithstanding subdivision (e), the Labor Commissioner  
39 may stay execution of any judgment entered upon an order,  
40 decision, or award that has become final upon good cause

appearing therefor and may impose the terms and conditions of the stay of execution. A certified copy of the stay of execution shall be filed with the clerk entering the judgment.

(h) When a judgment is satisfied in fact, ~~otherwise~~ *other* than by execution, the Labor Commissioner may, upon the motion of either party or on its own motion, order entry of satisfaction of judgment. The clerk of the court shall enter a satisfaction of judgment upon the filing of a certified copy of the order.

(i) The Labor Commissioner shall make every reasonable effort to ensure that judgments are satisfied, including taking all appropriate legal action and requiring the employer to deposit a bond as provided in Section 240.

(j) The judgment creditor, or the Labor Commissioner as assignee of the judgment creditor, ~~shall be~~ *is* entitled to court costs and reasonable ~~attorney~~ *attorney's* fees for enforcing the judgment that is rendered pursuant to this section.

SEC. 254. Section 141 of the Labor Code is amended to read:

141. (a) The terms of ~~offices~~ *office* of the members of the board shall be four years and they shall hold office until the appointment and qualification of a successor. The terms of the members of the board first appointed shall expire as follows: three members, one representative from management, one representative from labor, and one representative from occupational health, on June 1, 1974; three members, one representative from management, one representative from labor, and one representative from occupational safety, on June 1, 1975; one member June 1, 1976. The terms shall thereafter expire in the same relative order. Vacancies occurring shall be filled by appointment to the unexpired term.

(b) Each member of the board shall receive one hundred dollars (\$100) for each day of his *or her* actual attendance at meetings of the board, and other official business of the board, and his *or her* actual and necessary traveling expenses incurred in the performance of his *or her* duty as a member.

SEC. 255. Section 143.2 of the Labor Code is amended to read:

143.2. The board, acting as a whole, may adopt, amend, or repeal rules of practice and procedure pertaining to hearings on applications for permanent variances, variance appeals, and other matters within its jurisdiction. All-~~such~~ rules of practice and

1 procedure amendments thereto, or repeal thereof, shall be made in  
2 accordance with the provisions of Chapter ~~4.5~~ 3.5 (commencing  
3 with Section ~~11371~~ 11340) of Part 1 of Division 3, of Title 2 of  
4 the Government Code.

5 SEC. 256. Section 2140.5 of the Labor Code is amended to  
6 read:

7 2140.5. The fee paid by employers shall be based on the cost  
8 of coverage for all enrollees, and, if applicable, their dependents.  
9 The fee to be paid by each employer shall be based on the number  
10 of potential enrollees, and, if applicable, dependents, using the  
11 employer's own workforce on a date specified by the board as the  
12 basis for the allocation and ~~such~~ other factors as the board may  
13 determine in order to provide coverage that meets the standards of  
14 this part. To assist the board in determining the fee, each employer  
15 shall provide to the board information as specified by the board  
16 regarding potential enrollees, and, if applicable, dependents. To  
17 the extent feasible, the board shall work with the Employment  
18 Development Department to facilitate the provision of  
19 information regarding the number of potential enrollees and  
20 dependents.

21 SEC. 257. Section 2160.1 of the Labor Code is amended to  
22 read:

23 2160.1. Proof of coverage shall be demonstrated by any of the  
24 following:

25 (a) Any health care coverage that meets the minimum  
26 requirements set forth in Chapter 2.2 (commencing with Section  
27 1340) of Division 2 of the Health and Safety Code.

28 (b) A group health insurance policy, as defined in subdivision  
29 (b) of Section 106 of the Insurance Code, that covers hospital,  
30 surgical, and medical care expenses, provided the maximum  
31 out-of-pocket costs for insureds do not exceed the maximum  
32 out-of-pocket costs for enrollees of health care service plans  
33 providing benefits under a preferred provider organization policy.  
34 For the purposes of this section, a group health insurance policy  
35 shall not include *any of the following*:

36 (1) Medicare supplement, ~~vision-only, dental-only, and~~  
37 ~~Champus-supplement~~ *vision only, dental only, and Champus*  
38 *supplement* insurance. ~~For purposes of this section, a group health~~  
39 ~~insurance policy shall not include hospital~~

(2) *Hospital indemnity, ~~accident-only, and~~ accident only*, or specified disease insurance that pays benefits on a fixed benefit, cash-payment-only basis.

(c) Any Taft-Hartley health and welfare fund or any other lawful collective bargaining agreement ~~which~~ *that* provides for health and welfare coverage for *a* collective bargaining unit or other employees thereby covered.

(d) Any ~~employer-sponsored~~ *employer-sponsored* group health plan meeting the requirements of the federal Employee Retirement Income Security Act of 1974 (*29 U.S.C. Sec. 1001 et. seq.*), provided it meets the benefits required under subdivision (a) or (b) ~~of this section.~~

(e) A multiple employer welfare arrangement established pursuant to Section 742.20 of the Insurance Code, provided that its benefits have not changed after January 1, 2004, or that it meets the benefits required under subdivision (a) or (b) ~~of this section.~~

(f) Coverage provided under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section ~~22850~~ 22751) of Division 5 of Title 2 of the Government Code, provided it meets the benefits required under subdivision (a) or (b) ~~of this section~~ or is otherwise collectively bargained.

(g) Health coverage provided by the University of California to students of the University of California who are also employed by the University of California.

SEC. 258. Section 2190 of the Labor Code is amended to read:

2190. (a) Employers shall provide information to the board regarding potential enrollees, and, if applicable, dependents as prescribed by the board to assist the board in obtaining information necessary for enrollment. In no case shall the board require the employer to obtain from the potential enrollee information about the family income or other eligibility requirements for Medi-Cal, *the Healthy Families Program*, or other public programs other than that information about the enrollee's employment status otherwise known to the employer consistent with existing state and federal law and regulation.

(b) The board shall obtain enrollment information from potential enrollees and, if applicable, dependents to be covered by the program. The enrollee may voluntarily provide information sufficient to determine whether the enrollee or dependents may be

1 eligible for coverage under Medi-Cal, *the* Healthy Families  
2 *Program*, or other public programs if the enrollee chooses to seek  
3 enrollment in those programs. The board shall use a uniform  
4 enrollment form for obtaining that information. The board shall  
5 provide information to enrollees covered by the program  
6 regarding the coverage available under the program and other  
7 programs, including Medi-Cal and *the* Healthy Families *Program*,  
8 for which enrollees or dependents may be eligible.

9 SEC. 259. Section 2190.2 of the Labor Code is amended to  
10 read:

11 2190.2. (a) The board shall provide to the State Department  
12 of Health Services information concerning the potential or  
13 continuing eligibility of enrollees and dependents in the program  
14 for Medi-Cal.

15 (b) (1) For those enrollees and dependents of the program who  
16 are determined to be eligible for Medi-Cal, the board shall provide  
17 the ~~state~~ *state's* share of financial participation for the cost of  
18 Medi-Cal coverage provided through the program.

19 (2) For those enrollees and dependents of the program who are  
20 determined to be eligible for *the* Healthy Families *Program*, the  
21 board shall provide the ~~state~~ *state's* share of financial participation  
22 for the cost of *the* Healthy Families *Program* coverage provided  
23 through the program.

24 (c) Nothing in this part shall affect the authority of the State  
25 Department of Health Services or the board to verify eligibility as  
26 required by federal law.

27 (d) The board shall have authority to make any necessary  
28 repayments of enrollee contributions to persons whose coverage  
29 is provided under this section, and may also delegate to the State  
30 Department of Health Services the authority to repay those  
31 contributions.

32 (e) The State Department of Health Services shall seek all state  
33 plan amendments and federal approvals as necessary to maximize  
34 the amount of any federal financial participation available.

35 SEC. 260. Section 2200 of the Labor Code is amended to  
36 read:

37 2200. A contract entered into by the board pursuant to this part  
38 shall be exempt from any provision of law relating to competitive  
39 bidding, and shall be exempt from the review or approval of any  
40 division of the Department of General Services. The board shall



1 not be required to specify the amounts encumbered for each  
2 contract, but may allocate funds to each contract based on the  
3 projected or actual enrollee enrollments to a total amount not to  
4 exceed the amount ~~appropriate~~ *appropriated* for the program  
5 including applicable contributions.

6 SEC. 261. Section 2210 of the Labor Code is amended to  
7 read:

8 2210. (a) The State Health Purchasing Fund is hereby created  
9 in the State Treasury and, notwithstanding Section 13340 of the  
10 Government Code, is continuously appropriated to the board for  
11 the purposes specified in this part.

12 (b) The board shall authorize the expenditure from the fund of  
13 applicable employer fees and enrollee contributions that are  
14 deposited into the fund. This shall include the authority for the  
15 board to transfer funds to two separate special deposit funds to be  
16 established by the board pursuant to this part, and administered  
17 respectively by the State Department of Health Services and the  
18 board, to be used as the state's share of financial participation for  
19 the respective costs of Medi-Cal or *the Healthy Families Program*  
20 coverage provided to enrollees, and, if applicable, dependents;  
21 who enroll in Medi-Cal or *the Healthy Families Program*.

22 (c) Notwithstanding Section 2130.4, the board is authorized to  
23 obtain a loan from the General Fund for all necessary and  
24 reasonable expenses related to the establishment and  
25 administration of this part prior to the collection of the employer  
26 fee. The proceeds of the loan are subject to appropriation in the  
27 annual Budget Act. The board shall repay principal and interest,  
28 using the rate of interest paid under the Pooled Money Investment  
29 Account, to the General Fund no later than five years after the first  
30 year of implementation of the employer fee.

31 SEC. 262. Section 3099 of the Labor Code is amended to  
32 read:

33 3099. (a) The Division of Apprenticeship Standards shall do  
34 all of the following:

35 (1) On or before July 1, 2001, establish and validate minimum  
36 standards for the competency and training of electricians through  
37 a system of testing and certification.

38 (2) On or before March 1, 2000, establish an advisory  
39 committee and panels as necessary to carry out the functions under  
40 this section. There shall be contractor representation from both



1 joint apprenticeship programs and unilateral nonunion programs  
2 in the electrical contracting industry.

3 (3) On or before July 1, 2003, establish an electrical  
4 certification curriculum committee comprised of representatives  
5 of the State Department of Education, the California Community  
6 Colleges, and the division. The committee shall establish written  
7 educational curriculum standards for enrollees in training  
8 programs established pursuant to Section 3099.4.

9 (4) On or before July 1, 2001, establish fees necessary to  
10 implement this section.

11 (5) On or before July 1, 2001, establish and adopt regulations  
12 to enforce this section.

13 (6) Issue certification cards to electricians who have been  
14 certified pursuant to this section. Fees collected pursuant to  
15 paragraph ~~(3)~~ (4) are continuously appropriated in an amount  
16 sufficient to pay the costs of issuing certification cards, and that  
17 amount may be expended for that purpose by the ~~Division of~~  
18 ~~Apprenticeship Standards~~ division.

19 (b) There shall be no discrimination for or against any person  
20 based on membership or nonmembership in a union.

21 (c) As used in this section, “electricians” includes all persons  
22 who engage in the connection of electrical devices for electrical  
23 contractors licensed pursuant to Section 7058 of the Business and  
24 Professions Code, specifically, contractors classified as electrical  
25 contractors in the Contractors’ State License Board Rules and  
26 Regulations. This section does not apply to electrical connections  
27 under 100 volt-amperes. This section does not apply to persons  
28 performing work to which Section 7042.5 of the Business and  
29 Professions Code is applicable, or to electrical work ordinarily and  
30 customarily performed by stationary engineers. This section does  
31 not apply to electrical work in connection with the installation,  
32 operation, or maintenance of temporary or portable electrical  
33 equipment performed by technicians in the theatrical, motion  
34 picture production, television, hotel, exhibition, or trade show  
35 industries.

36 SEC. 263. Section 3600.1 of the Labor Code is amended to  
37 read:

38 3600.1. (a) Whenever any ~~fireman~~ *firefighter* of the state, as  
39 defined in Section ~~18300~~ 19886 of the Government Code, is  
40 injured, dies, or is disabled from performing his *or her* duties as

1 a ~~fireman~~ *firefighter* by reason of his *or her* proceeding to or  
2 engaging in a fire-suppression or rescue operation, or the  
3 protection or preservation of life or property, anywhere in this  
4 state, including the jurisdiction in which he *or she* is employed, but  
5 is not at the time acting under the immediate direction of his *or her*  
6 employer, he *or she* or his *or her* dependents, as the case may be,  
7 shall be accorded by his *or her* employer all of the same benefits  
8 of this division ~~which~~ *that* he, *she*, or they would have received  
9 had that ~~fireman~~ *firefighter* been acting under the immediate  
10 direction of his *or her* employer. Any injury, disability, or death  
11 incurred under the circumstances described in this section shall be  
12 deemed to have arisen out of and been sustained in the course of  
13 employment for purposes of workers' compensation and all other  
14 benefits.

15 (b) Nothing in this section shall be deemed to:

16 (1) Require the extension of any benefits to a ~~fireman~~  
17 *firefighter* who at the time of his *or her* injury, death, or disability  
18 is acting for compensation from one other than the state.

19 (2) Require the extension of any benefits to a ~~fireman~~  
20 *firefighter* employed by the state where by departmental  
21 regulation, whether now in force or hereafter enacted or  
22 promulgated, the activity giving rise to the injury, disability, or  
23 death, is expressly prohibited.

24 (c) If the provisions of this section are in conflict with the  
25 provisions of a memorandum of understanding reached pursuant  
26 to Section 3517.5 of the Government Code, the memorandum of  
27 understanding shall be controlling without further legislative  
28 action, except that if ~~such~~ *the* provisions of a memorandum of  
29 understanding require the expenditure of funds, the provisions  
30 shall not become effective unless approved by the Legislature in  
31 the annual Budget Act.

32 SEC. 264. Section 4610 of the Labor Code, as added by  
33 Chapter 203 of the Statutes of 2003, is amended and renumbered  
34 to read:

35 ~~4610.~~

36 ~~4611.~~ (a) When a contracting agent sells, leases, or transfers  
37 a health ~~providers~~ *provider's* contract to a payor, the rights and  
38 obligations of the provider shall be governed by the underlying  
39 contract between the health care provider and the contracting  
40 agent.

(b) For purposes of this section, the following terms ~~shall~~ have the following meanings:

(1) “Contracting agent” has the meaning set forth in paragraph (2) of subdivision (d) of Section 4609.

(2) “Payor” has the meaning set forth in paragraph (3) of subdivision (d) of Section 4609.

SEC. 265. Section 7304 of the Labor Code is amended to read:

7304. (a) Except as provided in ~~subdivisions~~ *subdivision* (b) ~~and (c)~~, the division shall cause all conveyances to be inspected at least once each year. If a conveyance is found upon inspection to be in a safe condition for operation, a permit for operation for not longer than one year shall be issued by the division.

(b) If a conveyance is subject to a full maintenance service contract, the division may, after investigation and inspection, issue a permit for operation for not longer than two years.

SEC. 266. Section 186.8 of the Penal Code is amended to read:

186.8. Notwithstanding that no response or claim has been filed pursuant to Section 186.5, in all cases where property is forfeited pursuant to this chapter and, ~~where~~ *if* necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all ~~such~~ *those* lienholders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed.

(b) To the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized under this chapter.

(c) To the general fund of the state or local governmental entity, whichever prosecutes.

(d) In any case involving a violation of subdivision (b) of Section 311.2, or Section 311.3 or 311.4, in lieu of the distribution of the proceeds provided for by subdivisions (b) and (c), the proceeds shall be deposited in the county children's trust fund, established pursuant to Section 18966 of the Welfare and Institutions Code, of the county ~~which~~ *that* filed the petition of forfeiture. If the county does not have a children's trust fund, the funds shall be deposited in the State Children's Trust Fund, established pursuant to Section 18969 of the Welfare and Institutions Code.

(e) In any case involving crimes against the ~~states~~ *state* beverage container recycling program, in lieu of the distribution of proceeds provided ~~for by~~ *in* subdivision (c), the proceeds shall be deposited in the penalty account established pursuant to subdivision (d) of Section 14580 of the Public Resources Code, except that a portion of the proceeds equivalent to the cost of prosecution in the case shall be distributed to the local prosecuting entity that filed the petition of forfeiture.

SEC. 267. Section 330b of the Penal Code is amended to read:

330b. ~~Possession or keeping of slot machines or devices.~~

~~(1)~~ *(a)* It is unlawful for any person to manufacture, repair, own, store, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to repair, sell, rent, lease, let on shares, lend or give away, or permit the operation, placement, maintenance, or keeping of, in any place, room, space, or building owned, leased, or occupied, managed, or controlled by that person, any slot machine or device, as defined in this section.

It is unlawful for any person to make or to permit the making of an agreement with another person regarding any slot machine or device, by which the user of the slot machine or device, as a result of the element of hazard or chance or other unpredictable outcome, may become entitled to receive money, credit, allowance, or other thing of value or additional chance or right to use the slot machine or device, or to receive any check, slug, token, or memorandum entitling the holder to receive money, credit, allowance, or other thing of value.

~~(2)~~

*(b)* The limitations of ~~paragraph (1)~~ *subdivision (a)*, insofar as they relate to owning, storing, possessing, or transporting any slot

1 machine or device, do not apply to any slot machine or device  
2 located upon or being transported by any vessel regularly operated  
3 and engaged in interstate or foreign commerce, so long as the slot  
4 machine or device is located in a locked compartment of the vessel,  
5 is not accessible for use, and is not used or operated within the  
6 territorial jurisdiction of this state.

7 ~~(3)~~

8 (c) The limitations of ~~paragraph (1)~~ *subdivision (a)* do not  
9 apply to a manufacturer's business activities that are conducted in  
10 accordance with the terms of a license issued by a tribal gaming  
11 agency pursuant to the tribal-state gaming compacts entered into  
12 in accordance with the Indian Gaming Regulatory Act (18 U.S.C.  
13 Sec. 1166 to 1168, inclusive, and 25 U.S.C. Sec. 2701 et seq.).

14 ~~(4)~~

15 (d) For purposes of this section, "slot machine or device"  
16 means a machine, apparatus, or device that is adapted, or may  
17 readily be converted, for use in a way that, as a result of the  
18 insertion of any piece of money or coin or other object, or by any  
19 other means, the machine or device is caused to operate or may be  
20 operated, and by reason of any element of hazard or chance or of  
21 other outcome of operation unpredictable by him or her, the user  
22 may receive or become entitled to receive any piece of money,  
23 credit, allowance, or thing of value, or additional chance or right  
24 to use the slot machine or device, or any check, slug, token, or  
25 memorandum, whether of value or otherwise, which may be  
26 exchanged for any money, credit, allowance, or thing of value, or  
27 which may be given in trade, irrespective of whether it may, apart  
28 from any element of hazard or chance or unpredictable outcome  
29 of operation, also sell, deliver, or present some merchandise,  
30 indication of weight, entertainment, or other thing of value.

31 ~~(5)~~

32 (e) Every person who violates this section is guilty of a  
33 misdemeanor.

34 ~~(6)~~

35 (f) Pinball and other amusement machines or devices, which  
36 are predominantly games of skill, whether affording the  
37 opportunity of additional chances or free plays or not, are not  
38 included within the term slot machine or device, as defined in this  
39 section.



1 SEC. 268. Section 330.7 of the Penal Code is amended to  
2 read:

3 330.7. (a) It shall be a defense to any prosecution under this  
4 chapter relating to slot machines, as defined in subdivision (2) (d)  
5 of Section 330b, if the defendant shows that the slot machine is an  
6 antique slot machine and was not operated for gambling purposes  
7 while in the defendant's possession. For the purposes of this  
8 section, the term "antique slot machine" means a slot machine that  
9 is over 25 years of age.

10 (b) Notwithstanding Section 335a, whenever the defense  
11 provided by subdivision (a) is offered, no slot machine seized from  
12 ~~any~~ a defendant shall be destroyed or otherwise altered until after  
13 a final court determination that ~~such~~ the defense is not applicable.  
14 If the defense is applicable, the machine shall be returned pursuant  
15 to provisions of law providing for the return of property.

16 (c) It is the purpose of this section to protect the collection and  
17 restoration of antique slot machines not presently utilized for  
18 gambling purposes because of their aesthetic interest and  
19 importance in California history.

20 SEC. 269. Section 597b of the Penal Code is amended to read:

21 597b. (a) Except as provided in subdivision (b), any person  
22 who, for amusement or gain, causes any bull, bear, or other animal,  
23 not including any dog, to fight with like kind of animal or creature,  
24 or causes any animal, including any dog, to fight with a different  
25 kind of animal or creature, or with any human being; or who, for  
26 amusement or gain, worries or injures any bull, bear, dog, or other  
27 animal, or causes any bull, bear, or other animal, not including any  
28 dog, to worry or injure each other; and any person who permits the  
29 same to be done on any premises under his or her charge or control;  
30 and any person who aids, abets, or is present at the fighting or  
31 worrying of an animal or creature, as a spectator, is guilty of a  
32 misdemeanor.

33 (b) Notwithstanding subdivision (a), any person who, for  
34 amusement or gain, causes any cock to fight with another cock or  
35 with a different kind of animal or creature or with any human  
36 being; or who, for amusement or gain, worries or injures any cock,  
37 or causes any cock to worry or injure another animal; and any  
38 person who permits the same to be done on any premises under his  
39 or her charge or control, and any person who aids or abets the  
40 fighting or worrying of any cock is guilty of a misdemeanor

1 punishable by imprisonment in a county jail for a period not to  
2 exceed one year, by a fine not to exceed five thousand dollars  
3 (\$5,000), or by both that imprisonment and fine.

4 (c) A second or subsequent conviction of this section, Section  
5 597c, or Section 597j is a misdemeanor punishable by  
6 imprisonment in a county jail for a period not to exceed one year,  
7 by a fine not to exceed twenty-five thousand dollars (\$25,000), or  
8 by both that imprisonment and fine, except in unusual  
9 circumstances where the interests of justice would be better served  
10 by the imposition of a lesser sentence.

11 (d) For the purposes of this section, aiding and abetting a  
12 violation of this section shall consist of something more than  
13 merely being present or a spectator at a place where a violation is  
14 occurring.

15 SEC. 270. Section 597c of the Penal Code is amended to read:

16 597c. (a) Except as provided in subdivision (b), whoever  
17 owns, possesses, keeps, or trains any animal; with the intent that  
18 the animal shall be engaged in an exhibition of fighting; or is  
19 present at any place, building, or tenement; where preparations are  
20 being made for an exhibition of the fighting of animals; with the  
21 intent to be present at that exhibition; or is present at that  
22 exhibition, is guilty of a misdemeanor.

23 (b) Notwithstanding subdivision (a), whoever owns, possesses,  
24 keeps, or trains any cock or other bird; with the intent that the cock  
25 or other bird shall be engaged in an exhibition of fighting is guilty  
26 of a crime punishable by imprisonment in a county jail for a period  
27 not to exceed one year, by a fine not to exceed five thousand dollars  
28 (\$5,000), or by both that imprisonment and fine.

29 (c) A second or subsequent conviction of this section, Section  
30 597b, or Section 597j is a misdemeanor punishable by  
31 imprisonment in a county jail for a period not to exceed one year,  
32 by a fine not to exceed twenty-five thousand dollars (\$25,000), or  
33 by both that imprisonment and fine, except in unusual  
34 circumstances where the interests of justice would be better served  
35 by the imposition of a lesser sentence.

36 (d) This section shall not apply to an exhibition of fighting of  
37 a dog with another dog.

38 SEC. 271. Section 1372 of the Penal Code is amended to read:

39 1372. (a) (1) If the medical director of the state hospital or  
40 other facility to which the defendant is committed, or the



1 community program director, county mental health director, or  
2 regional center director providing outpatient services, determines  
3 that the defendant has regained mental competence, the director  
4 shall immediately certify that fact to the court by filing a certificate  
5 of restoration with the court by certified mail, return receipt  
6 requested. For purposes of this section, the date of filing shall be  
7 the date on the return receipt.

8 (2) The court's order committing an individual to a state  
9 hospital or other treatment facility pursuant to Section 1370 shall  
10 include direction that the sheriff shall redeliver the patient to the  
11 court without any further order from the court upon receiving from  
12 the state hospital or treatment facility a copy of the certificate of  
13 restoration.

14 (3) The defendant shall be returned to the committing court in  
15 the following manner:

16 (A) A patient who remains confined in a state hospital or other  
17 treatment facility shall be redelivered to the sheriff of the county  
18 from which the patient was committed. The sheriff shall  
19 immediately return the person from the state hospital or other  
20 treatment facility to the court for further proceedings.

21 (B) The patient who is on outpatient status shall be returned by  
22 the sheriff to court through arrangements made by the outpatient  
23 treatment supervisor.

24 (C) *In* all cases, the patient shall be returned to the committing  
25 court no later than 10 days following the filing of a certificate of  
26 restoration. The state shall only pay for 10 hospital days for  
27 patients following the filing of a certificate of restoration of  
28 competency. The State Department of Mental Health shall report  
29 to the fiscal and appropriate policy committees of the Legislature  
30 on an annual basis in February, on the number of days that exceed  
31 the 10-day limit prescribed in this subparagraph. This report shall  
32 include, but not be limited to, a data sheet that itemizes by county  
33 the number of days that exceed this 10-day limit during the  
34 preceding year.

35 (b) If the defendant becomes mentally competent after a  
36 conservatorship has been established pursuant to the applicable  
37 provisions of the Lanterman-Petris-Short Act, Part 1  
38 (commencing with Section 5000) of Division 5 of the Welfare and  
39 Institutions Code, and Section 1370, the conservator shall certify  
40 that fact to the sheriff and district attorney of the county in which

1 the defendant's case is pending, defendant's attorney of record,  
2 and the committing court.

3 (c) When a defendant is returned to court with a certification  
4 that competence has been regained, the court shall notify either the  
5 community program director, the county mental health director, or  
6 the regional center director and the Director of Developmental  
7 Services, as appropriate, of the date of any hearing on the  
8 defendant's competence and whether or not the defendant was  
9 found by the court to have recovered competence.

10 (d) ~~Where~~ *If* the committing court approves the certificate of  
11 restoration to competence as to a person in custody, the court shall  
12 hold a hearing to determine whether the person is entitled to be  
13 admitted to bail or released on own recognizance status pending  
14 conclusion of the proceedings. ~~Where~~ *If* the superior court  
15 approves the certificate of restoration to competence regarding a  
16 person on outpatient status, unless it appears that the person has  
17 refused to come to court, that person shall remain released either  
18 on own recognizance status, or, in the case of a developmentally  
19 disabled person, either on the defendant's promise or on the  
20 promise of a responsible adult to secure the person's appearance  
21 in court for further proceedings. ~~Where~~ *If* the person has refused  
22 to come to court, the court shall set bail and may place the person  
23 in custody until bail is posted.

24 (e) A defendant subject to either subdivision (a) or (b) who is  
25 not admitted to bail or released under subdivision (d) may, at the  
26 discretion of the court, upon recommendation of the director of the  
27 facility where the defendant is receiving treatment, be returned to  
28 the hospital or facility of his or her original commitment or other  
29 appropriate secure facility approved by the community program  
30 director, the county mental health director, or the regional center  
31 director. The recommendation submitted to the court shall be  
32 based on the opinion that the person will need continued treatment  
33 in a hospital or treatment facility in order to maintain competence  
34 to stand trial or that placing the person in a jail environment would  
35 create a substantial risk that the person would again become  
36 incompetent to stand trial before criminal proceedings could be  
37 resumed.

38 (f) Notwithstanding subdivision (e), if a defendant is returned  
39 by the court to a hospital or other facility for the purpose of  
40 maintaining competency to stand trial and that defendant is already



under civil commitment to that hospital or facility from another county pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or as a developmentally disabled person committed pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, the costs of housing and treating the defendant in that facility following return pursuant to subdivision (e) shall be the responsibility of the original county of civil commitment.

SEC. 272. Section 1463.010 of the Penal Code is amended to read:

1463.010. The enforcement of court orders is recognized as an important element of collections efforts. The prompt, efficient, and effective collection of court-ordered fees, fines, forfeitures, penalties, and assessments ensures the appropriate respect for court orders. To provide for this prompt, efficient, and effective collection:

(a) The Judicial Council shall adopt guidelines for a comprehensive program concerning the collection of moneys owed for fees, fines, forfeitures, penalties, and assessments imposed by court order after considering the recommendations of the collaborative court-county working group established pursuant to subdivision (b). As part of its guidelines, the Judicial Council may establish standard agreements for entities to provide collection services. As part of its guidelines, the Judicial Council shall include provisions that promote competition by and between entities in providing collection services to courts and counties. The Judicial Council may delegate to the Administrative Director of the Courts the implementation of the aspects of this program to be carried out at the state level.

(b) The Judicial Council shall establish a collaborative court-county working group on collections. The California State Association of Counties shall appoint eight members of the working group. The Judicial Council shall appoint four court executives, two judges, and two employees of the Administrative Office of the Courts as members of the working group, and shall designate a chair of the working group. The working group shall, among other activities, survey courts and counties regarding current collection efforts and evaluate a variety of methods to enhance future collections, including, but not limited to, referring

1 accounts to private agencies for collection, develop a strategy for  
2 court and county cooperation in collection plan discussions,  
3 consult with groups other than courts and counties that are affected  
4 by collection programs, and evaluate and make recommendations  
5 to the Judicial Council concerning current and future collection  
6 methods.

7 (c) The courts and counties shall maintain the collection  
8 program which was in place on January 1, 1996, unless otherwise  
9 agreed to by the court and county. The program may wholly or  
10 partially be staffed and operated within the court itself, may be  
11 wholly or partially staffed and operated by the county, or may be  
12 wholly or partially contracted with a third party. In carrying out  
13 this collection program, each superior court and county shall  
14 develop a cooperative plan to implement the Judicial Council  
15 guidelines. In the event that a court and a county are unwilling or  
16 unable to enter into a cooperative plan pursuant to this section, the  
17 court or the county may request the continuation of negotiations  
18 with mediation assistance as mutually agreed upon and provided  
19 by the Administrative Director of the Courts and the California  
20 Association of Counties.

21 (d) Each superior court and county shall jointly report to the  
22 Judicial Council, as provided by the Judicial Council and not more  
23 than once a year, on the effectiveness of the cooperative superior  
24 court and county collection program. The Judicial Council shall  
25 report to the Legislature, as appropriate, on the effectiveness of the  
26 program.

27 (e) The Judicial Council may, when the efficiency and  
28 effectiveness of the collection process may be improved, facilitate  
29 a joint collection program between superior courts, between  
30 counties, or between superior ~~court~~ courts and counties.

31 (f) The Judicial Council may establish, by court rule, a program  
32 providing for the suspension and nonrenewal of a business and  
33 professional license if the holder of the license has unpaid fees,  
34 fines, forfeitures, penalties, and assessments imposed upon them  
35 under a court order. The Judicial Council may provide that some  
36 or all of the superior courts or counties participate in the program.  
37 Any program established by the Judicial Council shall ensure that  
38 the licensee receives adequate and appropriate notice of the  
39 proposed suspension or nonrenewal of his or her license and has

1 an opportunity to contest the suspension or nonrenewal. The  
2 opportunity to contest may not require a court hearing.

3 (g) Notwithstanding any other provision of law, the Judicial  
4 Council, after consultation with the Franchise Tax Board with  
5 respect to collections under Section 19280 of the Revenue and  
6 Taxation Code, may provide for an amnesty program involving the  
7 collection of outstanding fees, fines, forfeitures, penalties, and  
8 assessments, applicable either statewide or within one or more  
9 counties. The amnesty program shall provide that some or all of  
10 the interest or collections costs imposed on outstanding fees, fines,  
11 forfeitures, penalties, and assessments may be waived if the  
12 remaining amounts due are paid within the amnesty period.

13 SEC. 273. Section 6245 of the Penal Code is amended to read:  
14 6245. ~~(a)~~ In submitting a proposal, a county's plan shall ~~(1)~~  
15 include at least all of the following elements that meet standards  
16 established by the board in its request for proposal, and ~~(2)~~  
17 demonstrate that its program will have strong links to the  
18 community organizations involved in providing those elements,  
19 and that those community organizations have helped in designing  
20 the proposal:

21 ~~(1)~~

22 (a) A rigorous program of substance abuse testing.

23 ~~(2)~~

24 (b) A drug-free environment.

25 ~~(3)~~

26 (c) Substance abuse treatment.

27 ~~(4)~~

28 (d) Employment services.

29 ~~(5)~~

30 (e) Basic education services.

31 ~~(6)~~

32 (f) Mental health services and family counseling.

33 ~~(7)~~

34 (g) A strong linkage to probation and parole.

35 SEC. 274. Section 11171 of the Penal Code is amended to  
36 read:

37 11171. (a) (1) The Legislature hereby finds and declares that  
38 adequate protection of victims of child physical abuse or neglect  
39 has been hampered by the lack of consistent and comprehensive  
40 medical examinations.

(2) Enhancing examination procedures, documentation, and evidence collection relating to child abuse or neglect will improve the investigation and prosecution of child abuse or neglect as well as other child protection efforts.

(b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall, in cooperation with the State Department of Social Services, the Department of Justice, the California Association of Crime Lab Directors, the California State District Attorneys Association, the California State Sheriffs Association, the California Peace Officers Association, the California Medical Association, the California Police Chiefs' Association, child advocates, the California Medical Training Center, child protective services, and other appropriate experts, establish medical forensic forms, instructions, and examination ~~protocol~~ *protocols* for victims of child physical abuse or neglect using as a model the form and guidelines developed pursuant to Section ~~13823.5~~ 13823.5.

(c) The ~~form~~ *forms* shall include, but not be limited to, a place for notation concerning each of the following:

(1) Any notification of injuries or any report of suspected child physical abuse or neglect to law enforcement authorities or children's protective services, in accordance with existing reporting procedures.

(2) Addressing relevant consent issues, if indicated.

(3) The taking of a patient history of child physical abuse or neglect that includes other relevant medical history.

(4) The performance of a physical examination for evidence of child physical abuse or neglect.

(5) The collection or documentation of any physical evidence of child physical abuse or neglect, including any recommended photographic procedures.

(6) The collection of other medical or forensic specimens, including drug ingestion or toxication, as indicated.

(7) Procedures for the preservation and disposition of evidence.

(8) Complete documentation of medical forensic exam findings with recommendations for diagnostic studies, including blood tests and X-rays.

(9) An assessment as to whether there are findings that indicate physical abuse or neglect.

~~(e)~~

(d) The forms shall become part of the patient's medical record pursuant to guidelines established by the advisory committee of the agency or agencies designated by the Director of Finance pursuant to Section 13820 and subject to the confidentiality laws pertaining to the release of a medical forensic examination records.

~~(D)~~

(e) The forms shall be made accessible for use on the Internet.  
SEC. 275. Section 11502 of the Penal Code is amended to read:

11502. (a) Criteria for selection of education, training, and research programs for local public prosecutors and public defenders shall be developed by the agency or agencies designated by the Director of Finance pursuant to Section 13820 in consultation with an advisory group entitled the Prosecutors and Public Defenders Education and Training Advisory Committee.

(b) The Prosecutors and Public Defenders Education and Training Advisory Committee shall be composed of six local public prosecutors and six local public defender representatives, all of whom are appointed by the Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820, who shall provide staff services to the advisory committee. In appointing the members of the committee, the executive director shall invite the Attorney General, the State Public Defender, the Speaker of the Assembly, and the Senate President pro Tempore to participate as ex officio members of the committee.

(c) The agency or agencies designated by the Director of Finance pursuant to Section 13820, in consultation with the advisory committee, shall develop specific guidelines including criteria for selection of organizations to provide education, training, and research services.

(d) In determining the equitable allocation of funds between prosecution and defense functions, the agency or agencies designated by the Director of Finance pursuant to Section 13820 and the advisory committee shall give consideration to the amount of local government expenditures on a statewide basis for the support of those functions.



(e) The administration of the overall program shall be performed by the agency or agencies designated by the Director of Finance pursuant to Section 13820. The ~~office~~ *agency or agencies so designated* may, out of any appropriation for this program, expend an amount not to exceed 7.5 percent for any fiscal year for those purposes.

(f) No funds appropriated pursuant to this title shall be used to support a legislative advocate.

(g) To the extent necessary to meet the requirements of the State Bar of California relating to certification of training for legal specialists, the executive director shall ~~insure~~ *ensure* that, where appropriate, all programs funded under this title are open to all members of the State Bar of California. The program guidelines established pursuant to subdivision (c) shall provide for the reimbursement of costs for all participants deemed eligible by the agency or agencies designated by the Director of Finance pursuant to Section 13820, in conjunction with the Legal Training Advisory Committee, by means of course attendance.

SEC. 276. Section 12021 of the Penal Code is amended to read:

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c) (1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a

1 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,  
 2 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,  
 3 240, 241, 242, 243, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6,  
 4 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024,  
 5 subdivision (b) or (d) of Section 12034, Section 12040,  
 6 subdivision (b) of Section 12072, subdivision (a) of former  
 7 Section 12100, Section 12220, 12320, or 12590, or Section 8100,  
 8 8101, or 8103 of the Welfare and Institutions Code, any  
 9 firearm-related offense pursuant to Sections 871.5 and 1001.5 of  
 10 the Welfare and Institutions Code, or of the conduct punished in  
 11 paragraph (3) of subdivision (g) of Section 12072, and who, within  
 12 10 years of the conviction, owns, purchases, receives, or has in his  
 13 or her possession or under his or her custody or control, any  
 14 firearm is guilty of a public offense, which shall be punishable by  
 15 imprisonment in a county jail not exceeding one year or in the state  
 16 prison, by a fine not exceeding one thousand dollars (\$1,000), or  
 17 by both that imprisonment and fine. The court, on forms  
 18 prescribed by the Department of Justice, shall notify the  
 19 department of persons subject to this subdivision. However, the  
 20 prohibition in this paragraph may be reduced, eliminated, or  
 21 conditioned as provided in paragraph (2) or (3).

22 (2) Any person employed as a peace officer described in  
 23 Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose  
 24 employment or livelihood is dependent on the ability to legally  
 25 possess a firearm, who is subject to the prohibition imposed by this  
 26 subdivision because of a conviction under Section 273.5, 273.6, or  
 27 646.9, may petition the court only once for relief from this  
 28 prohibition. The petition shall be filed with the court in which the  
 29 petitioner was sentenced. If possible, the matter shall be heard  
 30 before the same judge ~~that~~ *who* sentenced the petitioner. Upon  
 31 filing the petition, the clerk of the court shall set the hearing date  
 32 and shall notify the petitioner and the prosecuting attorney of the  
 33 date of the hearing. Upon making each of the following findings,  
 34 the court may reduce or eliminate the prohibition, impose  
 35 conditions on reduction or elimination of the prohibition, or  
 36 otherwise grant relief from the prohibition as the court deems  
 37 appropriate:

38 (A) Finds by a preponderance of the evidence that the  
 39 petitioner is likely to use a firearm in a safe and lawful manner.

1 (B) Finds that the petitioner is not within a prohibited class as  
2 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,  
3 and the court is not presented with any credible evidence that the  
4 petitioner is a person described in Section 8100 or 8103 of the  
5 Welfare and Institutions Code.

6 (C) Finds that the petitioner does not have a previous  
7 conviction under this subdivision no matter when the prior  
8 conviction occurred.

9 In making its decision, the court shall consider the petitioner's  
10 continued employment, the interest of justice, any relevant  
11 evidence, and the totality of the circumstances. The court shall  
12 require, as a condition of granting relief from the prohibition under  
13 this section, that the petitioner agree to participate in counseling  
14 as deemed appropriate by the court. Relief from the prohibition  
15 shall not relieve any other person or entity from any liability that  
16 might otherwise be imposed. It is the intent of the Legislature that  
17 courts exercise broad discretion in fashioning appropriate relief  
18 under this paragraph in cases in which relief is warranted.  
19 However, nothing in this paragraph shall be construed to require  
20 courts to grant relief to any particular petitioner. It is the intent of  
21 the Legislature to permit persons who were convicted of an offense  
22 specified in Section 273.5, 273.6, or 646.9 to seek relief from the  
23 prohibition imposed by this subdivision.

24 (3) Any person who is subject to the prohibition imposed by  
25 this subdivision because of a conviction of an offense prior to that  
26 offense being added to paragraph (1) may petition the court only  
27 once for relief from this prohibition. The petition shall be filed  
28 with the court in which the petitioner was sentenced. If possible,  
29 the matter shall be heard before the same judge that sentenced the  
30 petitioner. Upon filing the petition, the clerk of the court shall set  
31 the hearing date and notify the petitioner and the prosecuting  
32 attorney of the date of the hearing. Upon making each of the  
33 following findings, the court may reduce or eliminate the  
34 prohibition, impose conditions on reduction or elimination of the  
35 prohibition, or otherwise grant relief from the prohibition as the  
36 court deems appropriate:

37 (A) Finds by a preponderance of the evidence that the  
38 petitioner is likely to use a firearm in a safe and lawful manner.

39 (B) Finds that the petitioner is not within a prohibited class as  
40 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,

1 and the court is not presented with any credible evidence that the  
2 petitioner is a person described in Section 8100 or 8103 of the  
3 Welfare and Institutions Code.

4 (C) Finds that the petitioner does not have a previous  
5 conviction under this subdivision, no matter when the prior  
6 conviction occurred.

7 In making its decision, the court may consider the interest of  
8 justice, any relevant evidence, and the totality of the  
9 circumstances. It is the intent of the Legislature that courts exercise  
10 broad discretion in fashioning appropriate relief under this  
11 paragraph in cases in which relief is warranted. However, nothing  
12 in this paragraph shall be construed to require courts to grant relief  
13 to any particular petitioner.

14 (4) Law enforcement officials who enforce the prohibition  
15 specified in this subdivision against a person who has been granted  
16 relief pursuant to paragraph (2) or (3) shall be immune from any  
17 liability for false arrest arising from the enforcement of this  
18 subdivision unless the person has in his or her possession a  
19 certified copy of the court order that granted the person relief from  
20 the prohibition. This immunity from liability shall not relieve any  
21 person or entity from any other liability that might otherwise be  
22 imposed.

23 (d) (1) Any person who, as an express condition of probation,  
24 is prohibited or restricted from owning, possessing, controlling,  
25 receiving, or purchasing a firearm and who owns, purchases,  
26 receives, or has in his or her possession or under his or her custody  
27 or control, any firearm but who is not subject to subdivision (a) or  
28 (c), is guilty of a public offense, which shall be punishable by  
29 imprisonment in a county jail not exceeding one year or in the state  
30 prison, by a fine not exceeding one thousand dollars (\$1,000), or  
31 by both that imprisonment and fine. The court, on forms provided  
32 by the Department of Justice, shall notify the department of  
33 persons subject to this subdivision. The notice shall include a copy  
34 of the order of probation and a copy of any minute order or abstract  
35 reflecting the order and conditions of probation.

36 (2) For any person who is subject to subdivision (a), (b), or (c),  
37 the court shall, at the time judgment is imposed, provide on a form  
38 supplied by the Department of Justice, a notice to the defendant  
39 prohibited by this section from owning, purchasing, receiving,  
40 possessing, or having under his or her custody or control, any

1 firearm. The notice shall inform the defendant of the prohibition  
2 regarding firearms and include a form to facilitate the transfer of  
3 firearms. Failure to provide the notice shall not be a defense to a  
4 violation of this section.

5 (e) Any person who (1) is alleged to have committed an offense  
6 listed in subdivision (b) of Section 707 of the Welfare and  
7 Institutions Code, an offense described in subdivision (b) of  
8 Section 1203.073, or any offense enumerated in paragraph (1) of  
9 subdivision (c), or any offense described in subdivision (a) of  
10 Section 12025, subdivision (a) of Section 12031, or subdivision  
11 (a) of Section 12034, and (2) is subsequently adjudged a ward of  
12 the juvenile court within the meaning of Section 602 of the Welfare  
13 and Institutions Code because the person committed an offense  
14 listed in subdivision (b) of Section 707 of the Welfare and  
15 Institutions Code, an offense described in subdivision (b) of  
16 Section 1203.073, or any offense enumerated in paragraph (1) of  
17 subdivision (c) shall not own, or have in his or her possession or  
18 under his or her custody or control, any firearm until the age of 30  
19 years. A violation of this subdivision shall be punishable by  
20 imprisonment in a county jail not exceeding one year or in the state  
21 prison, by a fine not exceeding one thousand dollars (\$1,000), or  
22 by both that imprisonment and fine. The juvenile court, on forms  
23 prescribed by the Department of Justice, shall notify the  
24 department of persons subject to this subdivision.  
25 Notwithstanding any other law, the forms required to be submitted  
26 to the department pursuant to this subdivision may be used to  
27 determine eligibility to acquire a firearm.

28 (f) Subdivision (a) shall not apply to a person who has been  
29 convicted of a felony under the laws of the United States unless  
30 either of the following criteria is satisfied:

31 (1) Conviction of a like offense under California law can only  
32 result in imposition of felony punishment.

33 (2) The defendant was sentenced to a federal correctional  
34 facility for more than 30 days, or received a fine of more than one  
35 thousand dollars (\$1,000), or received both punishments.

36 (g) (1) Every person who purchases or receives, or attempts to  
37 purchase or receive, a firearm knowing that he or she is prohibited  
38 from doing so by a temporary restraining order or injunction  
39 issued pursuant to Section 527.6 or 527.8 of the Code of Civil  
40 Procedure, a protective order issued pursuant to Section 136.2 or

1 646.91 of this code, or by a protective order issued pursuant to  
2 Section 15657.03 of the Welfare and Institutions Code, is guilty of  
3 a public offense, which shall be punishable by imprisonment in a  
4 county jail not exceeding one year or in the state prison, by a fine  
5 not exceeding one thousand dollars (\$1,000), or by both that  
6 imprisonment and fine.

7 (2) Every person who owns or possesses a firearm knowing that  
8 he or she is prohibited from doing so by a temporary restraining  
9 order or injunction issued pursuant to Section 527.6 or 527.8 of the  
10 Code of Civil Procedure, a protective order as defined in Section  
11 6218 of the Family Code, a protective order issued pursuant to  
12 Section 136.2 or 646.91 of this code, or by a protective order  
13 issued pursuant to Section 15657.03 of the Welfare and  
14 Institutions Code, is guilty of a public offense, which shall be  
15 punishable by imprisonment in a county jail not exceeding one  
16 year, by a fine not exceeding one thousand dollars (\$1,000), or by  
17 both that imprisonment and fine.

18 (3) Judicial Council shall provide notice on all protective  
19 orders that the respondent is prohibited from owning, possessing,  
20 purchasing, receiving, or attempting to purchase or receive a  
21 firearm while the protective order is in effect. The order shall also  
22 state that the firearm shall be relinquished to the local law  
23 enforcement agency for that jurisdiction or sold to a licensed gun  
24 dealer, and that proof of surrender or sale shall be filed within a  
25 specified time of receipt of the order. The order shall state the  
26 penalties for a violation of the prohibition. The order shall also  
27 state on its face the expiration date for relinquishment.

28 (4) If probation is granted upon conviction of a violation of this  
29 subdivision, the court shall impose probation consistent with the  
30 provisions of Section 1203.097.

31 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is  
32 justifiable where all of the following conditions are met:

33 (A) The person found the firearm or took the firearm from a  
34 person who was committing a crime against him or her.

35 (B) The person possessed the firearm no longer than was  
36 necessary to deliver or transport the firearm to a law enforcement  
37 agency for that agency's disposition according to law.

38 (C) If the firearm was transported to a law enforcement agency,  
39 it was transported in accordance with paragraph (18) of  
40 subdivision (a) of Section 12026.2.



(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 277. Section 13864 of the Penal Code is amended to read:

13864. There is hereby created, in the agency or agencies designated by the Director of Finance pursuant to Section 13820, the Comprehensive Alcohol and Drug Prevention Education component of the Suppression of Drug Abuse in Schools Program in public elementary schools in grades 4 to 6, inclusive. Notwithstanding Section 13861 or any other provision in this code, all Comprehensive Alcohol and Drug Prevention Education component funds made available to the agency or agencies designated by the Director of Finance pursuant to Section 13820 in accordance with the Classroom Instructional Improvement and Accountability Act shall be administered by and disbursed to



1 county superintendents of schools in this state by the Executive  
2 Director of the agency or agencies designated by the Director of  
3 Finance pursuant to Section 13820. All applications for that  
4 funding shall be reviewed and evaluated by the agency or agencies  
5 designated by the Director of Finance pursuant to Section 13820,  
6 in consultation with the State Department of Alcohol and Drug  
7 Programs and the State Department of Education.

8 (a) The executive director is authorized to allocate and award  
9 funds to county department superintendents of schools for  
10 allocation to individual school districts or to a consortium of two  
11 or more school districts. Applications funded under this section  
12 shall comply with the criteria, policies, and procedures established  
13 under subdivision (b) of this section.

14 (b) As a condition of eligibility for the funding described in this  
15 section, the school district or consortium of school districts shall  
16 have entered into an agreement with a local law enforcement  
17 agency to jointly implement a comprehensive alcohol and drug  
18 abuse prevention, intervention, and suppression program  
19 developed by the agency or agencies designated by the Director of  
20 Finance pursuant to Section 13820, in consultation with the State  
21 Department of Alcohol and Drug Programs and the State  
22 Department of Education, containing all of the following  
23 components:

24 (1) A standardized age-appropriate curriculum designed for  
25 pupils in grades 4 to 6, inclusive, specifically tailored and sensitive  
26 to the socioeconomic and ethnic characteristics of the target pupil  
27 population. Although new curricula shall not be required to be  
28 developed, existing curricula may be modified and adapted to  
29 meet local needs. The elements of the standardized comprehensive  
30 alcohol and drug prevention education program curriculum shall  
31 be defined and approved by the Governor's Policy Council on  
32 Drug and Alcohol Abuse, as established by Executive Order #  
33 D-70-80.

34 (2) A planning process that shall include both assessment of the  
35 school district's characteristics, resources and the extent of  
36 problems related to juvenile drug abuse, and input from local law  
37 enforcement agencies.

38 (3) A school district governing board policy that provides for  
39 a coordinated intervention system that, at a minimum, includes  
40 procedures for identification, intervention, and referral of at-risk

1 alcohol- and drug-involved youth, and identifies the roles and  
2 responsibilities of law enforcement, school personnel, parents,  
3 and pupils.

4 (4) Early intervention activities that include, but are not limited  
5 to, the identification of pupils who are high risk or have chronic  
6 drug abuse problems, assessment, and referral for appropriate  
7 services, including ongoing support services.

8 (5) Parent education programs to initiate and maintain parental  
9 involvement, with an emphasis for parents of at-risk pupils.

10 (6) Staff and in-service training programs, including both  
11 ~~in-depth~~ *in-depth* training for the core team involved in providing  
12 program services and general awareness training for all school  
13 faculty and administrative, credentialed, and noncredentialed  
14 school personnel.

15 (7) In-service training programs for local law enforcement  
16 officers.

17 (8) School, law enforcement, and community involvement to  
18 ensure coordination of program services. Pursuant to that  
19 coordination, the school district or districts and other local  
20 agencies are encouraged to use a single community advisory  
21 committee or task force for drug, alcohol, and tobacco abuse  
22 prevention programs, as an alternative to the creation of a separate  
23 group for that purpose under each state or federally funded  
24 program.

25 (c) The application of the county superintendent of schools  
26 shall be submitted to the agency or agencies designated by the  
27 Director of Finance pursuant to Section 13820. Funds made  
28 available to the agency or agencies designated by the Director of  
29 Finance pursuant to Section 13820 for allocation under this section  
30 are intended to enhance, but shall not supplant, local funds that  
31 would, in the absence of the Comprehensive Alcohol and Drug  
32 Prevention Education component, be made available to prevent,  
33 intervene in, or suppress drug abuse among schoolage children.  
34 For districts that are already implementing a comprehensive drug  
35 abuse prevention program for pupils in grades 4 to 6, inclusive, the  
36 county superintendent shall propose the use of the funds for drug  
37 prevention activities in school grades other than 4 to 6, inclusive,  
38 compatible with the program components of this section. The  
39 expenditure of funds for that alternative purpose shall be approved  
40 by the executive director.



(1) Unless otherwise authorized by the agency or agencies designated by the Director of Finance pursuant to Section 13820, each county superintendent of schools shall be the fiscal agent for any Comprehensive Alcohol and Drug Prevention Education component award, and shall be responsible for ensuring that each school district within that county receives the allocation prescribed by the agency or agencies designated by the Director of Finance pursuant to Section 13820. Each county superintendent shall develop a countywide plan that complies with program guidelines and procedures established by the agency or agencies designated by the Director of Finance pursuant to Section 13820 pursuant to subdivision (d). A maximum of 5 percent of the county's allocation may be used for administrative costs associated with the project.

(2) Each county superintendent of schools shall establish and chair a local coordinating committee to assist the superintendent in developing and implementing a countywide implementation plan. This committee shall include the county drug administrator, law enforcement executives, school district governing board members and administrators, school faculty, parents, and drug prevention and intervention program executives selected by the superintendent and approved by the county board of supervisors.

(d) The Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820, in consultation with the State Department of Alcohol and Drug Programs and the State Department of Education, shall prepare and issue guidelines and procedures for the Comprehensive Alcohol and Drug Prevention Education component consistent with this section.

(e) The Comprehensive Alcohol and Drug Prevention Education component guidelines shall set forth the terms and conditions upon which the agency or agencies designated by the Director of Finance pursuant to Section 13820 is prepared to award grants of funds pursuant to this section. The guidelines shall not constitute rules, regulations, orders, or standards of general application.

(f) Funds awarded under the Comprehensive Alcohol and Drug Prevention Education Program shall not be subject to Section 10318 of the Public Contracts Code.

(g) Funds available pursuant to Item 8100-111-001 and Provision 1 of Item 8100-001-001 of the Budget Act of 1989, or the successor provision of the appropriate Budget Act, shall be allocated to implement this section.

(h) The Executive Director of the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall collaborate, to the extent possible, with other state agencies that administer drug, alcohol, and tobacco abuse prevention education programs to streamline and simplify the process whereby local educational agencies apply for drug, alcohol, and tobacco education funding under this section and under other state and federal programs. The agency or agencies designated by the Director of Finance pursuant to Section 13820, the State Department of Alcohol and Drug Programs, the State Department of Education, and other state agencies, to the extent possible, shall develop joint policies and collaborate planning in the administration of drug, alcohol, and tobacco abuse prevention education programs.

SEC. 278. Section 858 of the Probate Code is amended to read:

858. If a proceeding has been brought under this part by a conservator on behalf of a conservatee, or by a guardian on behalf of a minor, and the conservatee or minor dies during the ~~pendancy~~ *pendency* of the proceeding, the personal representative of the conservatee or minor's estate or other successor in interest may proceed with the matter and the existing proceeding shall not be dismissed on account of the death of the conservatee or minor.

SEC. 279. Section 6242 of the Probate Code is amended to read:

6242. (a) Except as specifically provided in this chapter, a California statutory will shall include only the texts of the property disposition clauses and the mandatory clauses as they exist on the day the California statutory will is executed.

(b) Sections 6205, 6206, and 6227 apply to every California statutory will, including those executed before January 1, 1985. Section 6211 applies only to California statutory wills executed after July 1, 1991.

(c) Notwithstanding Section 6222, and except as provided in subdivision (b), a California statutory will is governed by the law that applied prior to January 1, 1992, if the California statutory will

1 is executed on a ~~from~~ *form* that (1) was prepared for use under  
2 former Sections 56 to 56.14, inclusive, or former Sections 6200 to  
3 6248, inclusive, of the Probate Code, and (2) satisfied the  
4 requirements of law that applied prior to January 1, 1992.

5 (d) A California statutory will does not fail to satisfy the  
6 requirements of subdivision (a) merely because the will is  
7 executed on a form that incorporates the mandatory clauses of  
8 Section 6241 that refer to former Section 1120.2. If the will  
9 incorporates the mandatory clauses with a reference to former  
10 Section 1120.2, the trustee has the powers listed in Article 2  
11 (commencing with Section 16220) of Chapter 2 of Part 4 of  
12 Division 9.

13 SEC. 280. Section 19403 of the Probate Code is amended to  
14 read:

15 19403. Nothing ~~is~~ *in* this chapter affects the rights of a  
16 purchaser or encumbrancer of property in good faith and for value  
17 from a person who is personally liable under this section.

18 SEC. 281. Section 20114.5 of the Probate Code is amended to  
19 read:

20 20114.5. (a) As used in this section:

21 (1) A reference to Section 4980A of the Internal Revenue Code  
22 means Section 4980A of the federal Internal Revenue Code of  
23 1986 as amended (26 U.S.C. Sec. 4980A) and also means former  
24 Section 4981A of the federal Internal Revenue Code of 1986.

25 (2) “Excess retirement accumulation” has the meaning given  
26 it in ~~Section~~ paragraph (3) of subsection (d) of Section 4980A.

27 (b) If the federal estate tax is increased under subsection (d) of  
28 Section 4980A of the Internal Revenue Code, the amount of the  
29 increase shall be a charge against the persons who receive the  
30 excess retirement accumulation that gives rise to the increase, and  
31 shall be equitably prorated among all persons who receive interests  
32 in qualified employer plans and individual retirement plans to  
33 which the excess retirement accumulation is attributable.

34 SEC. 282. Section 21320 of the Probate Code is amended to  
35 read:

36 21320. (a) If an instrument containing a no contest clause is  
37 or has become irrevocable, a beneficiary may apply to the court for  
38 a determination of whether a particular motion, petition, or other  
39 act by the beneficiary, including, but not limited to, creditor claims  
40 under Part 4 (commencing with Section 9000) of Division 7, Part

1 8 (commencing with Section 19000) of Division 9, an action  
2 pursuant to Section 21305, and an action under Part 7  
3 (commencing with Section 21700) of Division 11, would be a  
4 contest within the terms of the no contest clause.

5 (b) A no contest clause is not enforceable against a beneficiary  
6 to the extent an application under subdivision (a) is limited to the  
7 procedure and purpose described ~~in subdivision~~ *in subdivision* (a).

8 (c) A determination under this section of whether a proposed  
9 motion, petition, or other act by the beneficiary violates a no  
10 contest clause may not be made if a determination of the merits of  
11 the motion, petition, or other act by the beneficiary is required.

12 (d) A determination of whether Section 21306 or 21307 would  
13 apply in a particular case may not be made under this section.

14 SEC. 283. Section 6106.5 of the Public Contract Code is  
15 amended to read:

16 6106.5. (a) “State agency,” as used in this section, means  
17 those departments defined in Section 10106 of the Public Contract  
18 Code.

19 (b) “Contractor,” as used in this section, means “Firm,”  
20 “Architectural, landscape architectural, engineering,  
21 environmental, and land surveying services,” “Construction  
22 project management,” and “Environmental services” as defined  
23 in Section 4525 of the Government Code.

24 (c) State agencies shall include a provision in solicitations and  
25 in contracts, ~~where if~~ *if* the estimated amount to be retained exceeds  
26 ten thousand dollars (\$10,000), and the retention continues for a  
27 period of 60 days beyond the completion of phased services, to  
28 permit, upon written request and the expense of the contractor, the  
29 payment of retentions earned directly to a state or federally  
30 chartered bank in this state, as the escrow agent. The contractor  
31 may direct the investment of the payments into securities, pursuant  
32 to paragraph (d), and the contractor shall receive the interest  
33 earned on the investments. Upon satisfactory completion of the  
34 contract, the contractor shall receive from the escrow agent all  
35 securities, interest, and payments received by the escrow agent  
36 from the owner, pursuant to the terms of this section. State  
37 agencies, relative to contracts entered into prior to *the* enactment  
38 of this section, upon written request of the contractor, and subject  
39 to the approval of the state agency, may utilize the provisions of  
40 this section.

(d) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, interest-bearing demand deposit accounts, or any other investment mutually agreed to by the contractor and the state agency.

(e) (1) Any contractor who elects to receive interest on moneys withheld in retention by a state agency shall, at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a state agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the contractor elects to substitute securities in lieu of retention, then, by mutual consent of the contractor and subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by the contractor.

(2) This subdivision shall apply only to those subcontractors performing more than 5 percent of the contractor's total fee.

(3) No ~~contractor~~ contractor shall require any subcontractor to waive any provision of this section.

(f) An escrow agreement used pursuant to this section shall be null, void, and unenforceable unless it is substantially similar to the following form:

ESCROW AGREEMENT FOR SECURITY DEPOSITS

This Escrow Agreement is made and entered into by and between

whose address is \_\_\_\_\_

hereinafter called "owner," \_\_\_\_\_

whose address is \_\_\_\_\_

hereinafter called "contractor," and \_\_\_\_\_



1 whose address is \_\_\_\_\_  
2 hereinafter called "escrow agent."

3  
4 (1) Pursuant to Section 6106.5 of the Public Contract Code of  
5 the State of California, upon written request of the contractor, the  
6 owner shall make payments of retention earnings required to be  
7 withheld by the owner pursuant to the professional consulting  
8 services agreement entered into between the owner and contractor  
9 for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ hereafter referred to as  
10 the "contract."

11 (2) When the owner makes payment of retentions earned  
12 directly to the escrow agent, the escrow agent shall hold them for  
13 the benefit of the contractor until such time as the escrow created  
14 under this contract is terminated. The contractor may direct the  
15 investment of the payments into securities pursuant to Section  
16 6106.5(d) of the Public Contract Code. All terms and conditions  
17 of this agreement and the rights and responsibilities of the parties  
18 shall be equally applicable and binding when the owner pays the  
19 escrow agent directly.

20 (3) The contractor shall be responsible for paying all fees for  
21 the expenses incurred by the escrow agent in administering the  
22 escrow account. These expenses and payment terms shall be  
23 determined by the contractor and escrow agent.

24 (4) The contractor shall have the right to withdraw all or any  
25 part of the principal or interest in the escrow account only by  
26 written notice to the escrow agent accompanied by written  
27 authorization from the owner to the escrow agent that the owner  
28 consents to the withdrawal of the amount sought to be withdrawn  
29 by contractor.

30 (5) The owner shall have a right to draw upon the escrow  
31 account in the event of default by the contractor. Upon seven days'  
32 written notice to the escrow agent from the owner of the default,  
33 the escrow agent shall immediately distribute the cash as  
34 instructed by the owner.

35 (6) Upon receipt of written notification from the owner  
36 certifying that the contract is final and complete, and that the  
37 contractor has complied with all requirements and procedures  
38 applicable to the contract, the escrow agent shall release to the  
39 contractor all deposits and interest on deposits less escrow fees and  
40 charges of the escrow account. The escrow shall be closed

1 immediately upon disbursement of all moneys on deposit and  
2 payments of fees and charges.

3 (7) The escrow agent shall rely on the written notifications  
4 from the owner and the contractor pursuant to Sections (1) to (6),  
5 inclusive, of this agreement and the owner and contractor shall  
6 hold the escrow agent harmless from the escrow agent's release,  
7 conversion, and disbursement of the securities and interest as set  
8 forth above.

9 (8) The names of the persons who are authorized to give written  
10 notice or to receive written notice on behalf of the owner and on  
11 behalf of the contractor in connection with the foregoing, and  
12 exemplars of their respective signatures are as follows:

14 On behalf of the owner:	On behalf of the contractor:
15 _____	_____
16 Title	Title
17 _____	_____
18 Name	Name
19 _____	_____
20 Address	Address
21 _____	_____
22	
23 On behalf of the escrow agent:	
24 _____	
25 Title	
26 _____	
27 Name	
28 _____	
29 Signature	
30 _____	
31 Address	
32 _____	
33	

34 At the time the escrow account is opened, the owner and  
35 contractor shall deliver to the escrow agent a fully executed  
36 counterpart of this Agreement.

37  
38 IN WITNESS WHEREOF, the parties have executed this  
39 Agreement by their proper officers on the date first set forth above.  
40



1	Owner	Contractor
2		
3	_____	_____
4	Title	Title
5		
6	_____	_____
7	Name	Name
8		
9	_____	_____
10	Signature	Signature
11		
12	_____	_____
13		

14 SEC. 284. Section 10295.3 of the Public Contract Code is  
 15 amended to read:

16 10295.3. (a) (1) Notwithstanding any other provision of  
 17 law, no state agency may enter into any contract for the acquisition  
 18 of goods or services in the amount of one hundred thousand dollars  
 19 (\$100,000) or more with a contractor who, in the provision of  
 20 benefits, discriminates between employees with spouses and  
 21 employees with domestic partners, or discriminates between the  
 22 domestic partners and spouses of those employees.

23 (2) For purposes of this section, "contract" includes contracts  
 24 with a cumulative amount of one hundred thousand dollars  
 25 (\$100,000) or more per contractor in each fiscal year.

26 (3) For purposes of this section, "domestic partner" means one  
 27 of two persons who has filed a declaration of domestic partnership  
 28 with the Secretary of State pursuant to Division 2.5 (commencing  
 29 with Section 297) of the Family Code.

30 (4) (A) Subject to subparagraph (B), this section does not  
 31 apply to any contracts executed or amended prior to January 1,  
 32 2007, or to bid packages advertised and made available to the  
 33 public, or any competitive or sealed bids received by the state,  
 34 prior to January 1, 2007, unless and until those contracts or  
 35 property contracts are amended after December 31, 2006, and  
 36 would otherwise be subject to this section.

37 (B) If a duration of a contract executed or amended prior to  
 38 January 1, 2007, is for more than one year going beyond January  
 39 1, 2008, this section shall apply to the contract on January 1, 2008.

1 (5) The requirements of this section shall apply only to those  
2 portions of a contractor's operations that occur under any of the  
3 following conditions:

4 (A) Within the state.

5 (B) On real property outside the state if the property is owned  
6 by the state or if the state has a right to occupy the property, and  
7 if the contractor's presence at that location is connected to a  
8 contract with the state.

9 (C) Elsewhere in the United States where work related to a state  
10 contract is being performed.

11 (b) Contractors shall treat as confidential to the maximum  
12 extent allowed by law or by the requirement of the contractor's  
13 insurance provider, any request by an employee or applicant for  
14 employment for domestic partner or spousal benefits or any  
15 documentation of eligibility for domestic partner or spousal  
16 benefits submitted by an employee or applicant for employment.

17 (c) After taking all reasonable measures to find a contractor  
18 that complies with this section as determined by the state agency,  
19 the requirements of this section may be waived under any of the  
20 following circumstances:

21 (1) Whenever there is only one prospective contractor willing  
22 to enter into a specific contract with the state agency.

23 (2) If the contract is necessary to respond to an emergency, as  
24 determined by the state agency, that endangers the public health,  
25 welfare, or safety, or the contract is necessary for the provision of  
26 essential services, and no entity that complies with the  
27 requirements of this section capable of responding to the  
28 emergency is immediately available.

29 (3) Where the requirements of this section violate, or are  
30 inconsistent with, the terms or conditions of a grant, subvention,  
31 or agreement, provided that a good faith attempt has been made by  
32 the agency to change the terms or conditions of any grant,  
33 subvention, or agreement to authorize application of this section.

34 (4) Where the contractor is providing wholesale or bulk water,  
35 power, or natural gas, the conveyance or transmission of the same,  
36 or ancillary services, as required for assuring reliable services in  
37 accordance with good utility practice, provided that the purchase  
38 of the same may not practically be accomplished through the  
39 standard competitive bidding procedures, and further provided

1 that this exemption does not apply to contractors providing direct  
2 retail services to end users.

3 (d) (1) If there is a difference in the cost to provide a certain  
4 benefit to a domestic partner or spouse, the contractor is not  
5 deemed to be in violation of this section so long as it permits the  
6 employee to pay any excess costs.

7 (2) The contractor is not deemed to discriminate in the  
8 provision of benefits if the contractor, in providing the benefits,  
9 pays the actual costs incurred in obtaining the benefit.

10 (3) In the event a contractor is unable to provide a certain  
11 benefit, despite taking reasonable measures to do so, the contractor  
12 may not be deemed to discriminate in the provision of benefits.

13 (4) For any contracts executed or amended on or after July 1,  
14 2004, and prior to January 1, 2007, and to bid packages advertised  
15 and made available to the public, or any competitive or sealed bids  
16 received by the state, on or after July 1, 2004, and prior to January  
17 1, 2007, unless and until those contracts or bid packages are  
18 amended after June 30, 2004, but prior to January 1, 2007, and  
19 would otherwise be subject to this section, a contractor may  
20 require an employee to pay the costs of providing additional  
21 benefits that are offered to comply with this section if an employee  
22 elects to have the additional benefits. This paragraph shall not be  
23 construed to permit a contractor to require an employee to cover  
24 the costs of providing any benefits, which have otherwise been  
25 provided to all employees regardless of marital or domestic  
26 partner status.

27 (e) A contractor is not deemed to be in violation of this section  
28 if the contractor does any of the following:

29 (1) Offers the same benefits to employees with domestic  
30 partners and employees with spouses and offers the same benefits  
31 to domestic partners and spouses of employees.

32 (2) Elects to provide the same benefits to individuals that are  
33 provided to employees' spouses and employees' domestic  
34 partners.

35 (3) Elects to provide benefits on a basis unrelated to an  
36 employee's marital status or domestic partnership status,  
37 including, but not limited to, allowing each employee to designate  
38 a legally domiciled member of the employee's household as being  
39 eligible for benefits.

1 (4) Elects not to provide benefits to employees based on their  
2 marital status or domestic partnership status, or ~~elect~~ *elects* not to  
3 provide benefits to employees' spouses and to employees'  
4 domestic partners.

5 (f) (1) Every contract subject to this chapter shall contain a  
6 statement by which the contractor certifies that the contractor is in  
7 compliance with this section.

8 (2) The department or other contracting agency shall enforce  
9 this section pursuant to its existing enforcement powers.

10 (3) (A) If a contractor falsely certifies that it is in compliance  
11 with this section, the contract with that contractor shall be subject  
12 to Article 9 (commencing with Section 10420), unless, within a  
13 time period specified by the department or other contracting  
14 agency, the contractor provides to the department or agency proof  
15 that it has complied, or is in the process of complying, with this  
16 section.

17 (B) The application of the remedies or penalties contained in  
18 Article 9 (commencing with Section 10420) to a contract subject  
19 to this chapter shall not preclude the application of any existing  
20 remedies otherwise available to the department or other  
21 contracting agency under its existing enforcement powers.

22 (g) Nothing in this section is intended to regulate the  
23 contracting practices of any local jurisdiction.

24 (h) This section shall be construed so as not to conflict with  
25 applicable federal laws, rules, or regulations. In the event that a  
26 court or agency of competent jurisdiction holds that federal law,  
27 rule, or regulation invalidates any clause, sentence, paragraph, or  
28 section of this code or the application thereof to any person or  
29 circumstances, it is the intent of the state that the court or agency  
30 sever that clause, sentence, paragraph, or section so that the  
31 remainder of this section shall remain in effect.

32 SEC. 285. Section 2755 of the Public Resources Code is  
33 amended to read:

34 2755. The board shall adopt regulations ~~which~~ *that* establish  
35 state policy for the reclamation of mined lands in accordance with  
36 ~~the general provisions set forth in~~ Article 1 (commencing with  
37 Section 2710) of this chapter and pursuant to Chapter ~~4.5~~ 3.5  
38 (commencing with Section ~~41371~~ 11340) of Part 1 of Division 3  
39 of Title 2 of the Government Code.

1 SEC. 286. Section 2802 of the Public Resources Code is  
2 amended to read:

3 2802. (a) The department shall develop jointly with the  
4 United States Geological Survey a prototype earthquake  
5 prediction system along the ~~central~~ *central* San Andreas fault near  
6 the City of Parkfield.

7 (b) The system shall include a dense cluster of seismic and  
8 crustal deformation instrumentation capable of monitoring  
9 geophysical and geochemical phenomena associated with  
10 earthquakes in the region. These data shall be analyzed  
11 continuously to determine if precursory anomalies can be  
12 identified with sufficient certainty to make a short-term  
13 prediction. The department shall not duplicate any of the ongoing  
14 efforts of the United States Geological Survey or any public or  
15 private college or university in the development of this system.

16 (c) In meeting its obligations under this chapter, the department  
17 shall develop, in cooperation with the United States Geological  
18 Survey, a plan for completion of the Parkfield instrumentation  
19 network. The plan shall provide for all of the following:

20 (1) Augmentation of monitoring instruments with the goal of  
21 detecting precursors of the Parkfield characteristic earthquake.

22 (2) Operation by the department of a remote data review station  
23 in Sacramento which will provide state scientists with data from  
24 the Parkfield prototype earthquake prediction system and other  
25 data, as required, to advise the Office of Emergency Services of the  
26 occurrence of precursors and verification of the predicted event.

27 (3) Advising the United States Geological Survey, the Office  
28 of Emergency Services, the Seismic Safety Commission, and the  
29 California Earthquake Prediction Evaluation Council, regarding  
30 the department's review of Parkfield data.

31 (d) On January 1, 1987, the department shall issue a progress  
32 report to the Governor, the Legislature, and the Seismic Safety  
33 Commission. An annual progress report shall be made each year  
34 thereafter. The project shall terminate on January 1, 1992, unless  
35 extended by statute.

36 SEC. 287. Section 3305 of the Public Resources Code is  
37 amended to read:

38 3305. At the hearing all persons interested are entitled to be  
39 heard and may present testimony either oral or written. All  
40 witnesses shall be sworn, and a transcript of the proceedings shall



1 be kept by a stenographic reporter. All the provisions of this  
2 chapter in reference to the ~~subpenaing~~ *subpoenaing* of witnesses  
3 and the taking of depositions are applicable to the hearing before  
4 the supervisor. On the request of the supervisor, a hearing officer  
5 in the ~~Division Office~~ of Administrative ~~Procedure~~ *Hearings* may  
6 assist and rule upon legal matters, but such officer shall not make  
7 the determination specified in Section 3306 of this chapter.

8 SEC. 288. Section 3324 of the Public Resources Code is  
9 amended to read:

10 3324. At ~~such~~ hearings all persons interested are entitled to be  
11 heard and present evidence, both oral and written. All such persons  
12 shall be sworn, and a transcript of the proceedings shall be kept.  
13 The procedure to be followed by the supervisor with respect to the  
14 administering of oaths, applying for ~~subpenas~~ *subpoenas* for  
15 witnesses and for the production of books, records, well logs,  
16 production records, and other documents, the taking of  
17 depositions, and the penalties attaching for failure to comply with  
18 any order of the supervisor or ~~subpena~~ *subpoena* issued, shall be  
19 in the manner as in this division provided. On the request of the  
20 supervisor, a hearing officer in the ~~Division Office~~ of  
21 Administrative ~~Procedure~~ *Hearings* may be assigned to assist in  
22 conducting ~~such~~ the proceedings as provided in Section ~~410.5~~  
23 *11370.3* of the ~~Business and Professions~~ *Government* Code. ~~Such~~  
24 The officer, however, shall not make the determination specified  
25 in Section 3321.

26 The provisions of Section 3234 prohibiting the giving of  
27 testimony as to the contents of records on file shall not apply to this  
28 article. All of ~~such~~ *these* records shall be available and may be  
29 received in evidence in any public hearing or in any judicial  
30 proceeding herein provided for.

31 SEC. 289. Section 5079.50 of the Public Resources Code is  
32 amended to read:

33 5079.50. The office shall award grants to public agencies and  
34 nonprofit organizations to improve the management of  
35 California's historical resources ~~which~~ *that*, because of natural  
36 events or human activities, have suffered impairment or loss of  
37 historic integrity. Grants made pursuant to this section shall not be  
38 available to acquire public facilities, except to the extent the  
39 acquisition is incidental to the historical resource management  
40 project.

1 SEC. 290. Section 14509.3 of the Public Resources Code is  
2 amended to read:

3 14509.3. "Cullet" means scrap glass that is derived from  
4 postfilled food, drink, or beverage container glass ~~produced~~  
5 *produced* or imported for sale in the state.

6 SEC. 291. Section 14552.5 of the Public Resources Code is  
7 amended to read:

8 14552.5. (a) The department shall supply all certified  
9 processors with a standardized rejection form that shall include,  
10 but not be limited to, the ~~name~~ *names* of the parties rejecting the  
11 postfilled beverage container material, the date of the rejections,  
12 the reasons for the rejections, the amount of rejected material, and  
13 a detailed accounting of the steps taken by the processor and  
14 container manufacturer to avert landfilling or disposal of the  
15 material, as required by subdivision (c) of Section 14552.51.

16 (b) Every container manufacturer shall fill out the standardized  
17 rejection form specified in subdivision (a) whenever that container  
18 manufacturer rejects a load of redeemed beverage container  
19 materials physically delivered to the manufacturer's place of  
20 business and offered for sale by a certified processor. The rejection  
21 form shall be filled out by the container manufacturer at the time  
22 of the rejection and immediately given to the certified processor  
23 for submittal to the department. Any container manufacturer who  
24 refuses to fill out the standardized rejection form required by this  
25 subdivision is in violation of this division and is subject to the fines  
26 and penalties in Sections 14591 and 14591.1.

27 (c) If a processor has made a good faith effort, as determined  
28 by the department, to locate a willing purchaser and is  
29 unsuccessful, the processor may fill out the standardized rejection  
30 form specified in subdivision (a) and submit it to the department.  
31 The processor rejection form shall include, but is not limited to, the  
32 name of the processor, the container manufacturers and other  
33 potential purchasers contacted, a detailed accounting of the  
34 methods used to contact the potential buyers, the date of the  
35 rejections, the reasons given for the rejections, the amount of  
36 postfilled beverage container material rejected, and any other steps  
37 taken to avert landfilling or disposal of the material.

38 (d) If a container manufacturer rejects a load of postfilled  
39 containers by telephone, written correspondence of any kind, or  
40 other similar method, the container manufacturer shall, in a



manner prescribed by the department, keep accurate logbooks of the offer of loads by the certified processor, and make that logbook available for inspection by the department upon demand. The logbook shall contain, but is not limited to, the same information required in the rejection form pursuant to subdivision (a).

(e) The standardized rejection form specified in subdivision (a) shall be submitted to the department by the certified processor with the written request to dispose of the redeemed material submitted pursuant to Section 14552.51. This material shall not be disposed of without a written authorization to do so by the department pursuant to Section 14552.51.

(f) Nothing in this section shall be interpreted to lessen certified processors' and container ~~manufacturer's~~ *manufacturers'* responsibilities relating to beverage container recycling, or diminish in any way the department's authority to carry out the intent and goals of this division.

SEC. 292. Section 14581 of the Public Resources Code is amended to read:

14581. (a) Subject to the availability of funds, and pursuant to subdivision (c), the department shall expend the ~~money~~ *moneys* set aside in the fund, pursuant to subdivision (c) of Section 14580 for the purposes of this section:

(1) On and after July 1, 2002, twenty-six million five hundred thousand dollars (\$26,500,000) shall be expended annually for the payment of handling fees required pursuant to Section 14585.

(2) Fifteen million dollars (\$15,000,000) shall be expended annually for payments for curbside programs and neighborhood dropoff programs pursuant to Section 14549.6.

(3) (A) Fifteen million dollars (\$15,000,000), plus the proportional share of the cost-of-living adjustment, as provided in subdivision (b), shall be expended annually in the form of grants for beverage container litter reduction programs and recycling programs issued to either of the following:

(i) Certified community conservation corps that were in existence on September 30, 1999, or that are formed subsequent to that date, that are designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the most recent census, of more than 250,000 persons.

1 (ii) Community conservation corps that are designated by a  
2 county to perform litter abatement, recycling, and related  
3 activities, and are certified by the California Conservation Corps  
4 as having operated for a minimum of two years and as meeting all  
5 other criteria of Section 14507.5.

6 (B) Any grants provided pursuant to this paragraph shall not  
7 comprise more than 75 percent of the annual budget of a  
8 community conservation corps.

9 (4) (A) Ten million five hundred thousand dollars  
10 (\$10,500,000) may be expended annually for payments of five  
11 thousand dollars (\$5,000) to cities and ten thousand dollars  
12 (\$10,000) for payments to counties for beverage container  
13 recycling and litter cleanup activities, or the department may  
14 calculate the payments to counties and cities on a per capita basis,  
15 and may pay whichever amount is greater, for those activities.

16 (B) Eligible activities for the use of these funds may include,  
17 but are not necessarily limited to, support for new or existing  
18 curbside recycling programs, neighborhood dropoff recycling  
19 programs, public education promoting beverage container  
20 recycling, litter prevention, and cleanup, cooperative regional  
21 efforts among two or more cities or counties, or both, or other  
22 beverage container recycling programs.

23 (C) These funds may not be used for activities unrelated to  
24 beverage container recycling or litter reduction.

25 (D) To receive these funds, a city, county, or city and county  
26 shall fill out and return a funding request form to the Department  
27 of Conservation. The form shall specify the beverage container  
28 recycling or litter reduction activities for which the funds will be  
29 used.

30 (E) The Department of Conservation shall annually prepare  
31 and distribute a funding request form to each city, county, or city  
32 and county. The form shall specify the amount of beverage  
33 container recycling and litter cleanup funds for which the  
34 jurisdiction is eligible. The form shall not exceed one double-sided  
35 page in length, and may be submitted electronically. If a city,  
36 county, or city and county does not return the funding request form  
37 within 90 days of receipt of the form from the department, the city,  
38 county, or city and county is not eligible to receive the funds for  
39 that funding cycle.



(F) For the purposes of this paragraph, per capita population shall be based on the population of the incorporated area of a city or city and county and the unincorporated area of a county. The department may withhold payment to any city, county, or city and county that has prohibited the siting of a supermarket site, caused a supermarket site to close its business, or adopted a land use policy that restricts or prohibits the siting of a supermarket site within its jurisdiction.

(5) (A) One million five hundred thousand dollars (\$1,500,000) may be expended annually in the form of grants for beverage container recycling and litter reduction programs.

(B) Up to a total of six million eight hundred forty thousand dollars (\$6,840,000) shall be paid to the City of San Diego, between January 1, 2000, and January 1, 2004, for a curbside recycling program conducted pursuant to Section 14549.7.

(6) (A) The department shall expend the amount necessary to pay the processing payment and supplemental processing payment established pursuant to Sections 14575 and 14575.5 and pay processing fee rebates pursuant to Section 14575.2. The department shall establish separate processing fee accounts in the fund for each beverage container material type for which a processing payment and processing fee is calculated pursuant to Section 14575, or for which a processing payment is calculated pursuant to Section 14575 and a voluntary artificial scrap value is calculated pursuant to Section 14575.1, into which account shall be deposited all of the following:

(i) All amounts paid as processing fees for each beverage container material type pursuant to Section 14575.

(ii) Funds equal to the difference between the amount in ~~subparagraph~~ clause (i) and the amount of the processing payments established in subdivision (b) of Section 14575, and adjusted pursuant to paragraphs (2) and (3) of subdivision (c) of, and subdivision (f) of, Section 14575, to reduce the processing fee to the level provided in subdivision (f) of Section 14575, or to reflect the agreement by a willing purchaser to pay a voluntary artificial scrap value pursuant to Section 14575.1.

(iii) Funds equal to an amount sufficient to pay the total amount of the supplemental processing payments established pursuant to Section 14575.5.

(B) Notwithstanding Section 13340 of the Government Code, the money in each processing fee account is hereby continuously appropriated to the department for expenditure without regard to fiscal years, for purposes of making processing payments and supplemental processing payments, and reducing processing fees, pursuant to Sections 14575 and 14575.5 and paying processing fee rebates pursuant to Section 14575.2.

(7) Up to five million dollars (\$5,000,000) may be annually expended by the department for the purposes of undertaking a statewide public education and information campaign aimed at promoting increased recycling of beverage containers.

(8) Up to three million dollars (\$3,000,000) shall be expended annually for the payment of quality glass incentive payments pursuant to Section 14549.1.

(9) (A) Three hundred thousand dollars (\$300,000) shall be expended annually by the department, until January 1, 2005, pursuant to a cooperative agreement entered into between the department and Keep California Beautiful, a nonprofit 501(c)(3) organization chartered by the State of California in 1990, for the purpose of conducting statewide public education campaigns aimed at preventing and cleaning up beverage containers and related litter. The campaigns shall include, but not be limited to, coordination of Keep California Beautiful month.

(B) Prior to making an expenditure pursuant to this paragraph, the department shall enter into a cooperative agreement with Keep California Beautiful.

(C) As part of the cooperative agreement, Keep California Beautiful shall provide the department with an annual campaign plan and budget, and a report of previous year campaign activities.

(10) Up to ten million dollars (\$10,000,000) may be expended annually by the department, until January 1, 2007, to issue grants for recycling market development and expansion-related activities aimed at increasing the recycling of beverage containers, including, but not limited to, the following:

(A) Research and development of collecting, sorting, processing, cleaning, or otherwise upgrading the market value of recycled beverage containers.

(B) Identification, development, and expansion of markets for recycled beverage containers.



1 (C) Research and development for products manufactured  
2 using recycled beverage containers.

3 (D) Payments to California manufacturers who recycle  
4 beverage containers that are marked by resin type identification  
5 codes code “3,” “4,” “5,” “6,” or “7,” pursuant to Section  
6 18015.

7 (11) Up to ten million dollars (\$10,000,000) may be transferred  
8 on a one-time basis by the department to the Recycling  
9 Infrastructure Loan Guarantee Account, for expenditure pursuant  
10 to Section 14582.

11 (b) The fifteen million dollars (\$15,000,000) that is set aside  
12 pursuant to paragraph (3) of subdivision (a) is a base amount that  
13 the department shall adjust annually to reflect any increases or  
14 decreases in the cost of living, as measured by the Department of  
15 Labor, or a successor agency, of the federal government.

16 (c) (1) The department shall review all funds on a quarterly  
17 basis to ensure that there are adequate funds to make the payments  
18 specified in this section and the processing fee reductions required  
19 pursuant to Section 14575.

20 (2) If the department determines, pursuant to a review made  
21 pursuant to paragraph (1), that there may be inadequate funds to  
22 pay the payments required by this section and the processing fee  
23 reductions required pursuant to Section 14575, the department  
24 shall immediately notify the appropriate policy and fiscal  
25 committees of the Legislature regarding the inadequacy.

26 (3) On or before 180 days after the notice is sent pursuant to  
27 paragraph (2), the department may reduce or eliminate  
28 expenditures, or both, from the funds as necessary, according to  
29 the procedure set forth in subdivision (d).

30 (d) If the department determines that there are insufficient  
31 funds to make the payments specified pursuant to this section and  
32 Section 14575, the department shall reduce all payments  
33 proportionally.

34 (e) Prior to making an expenditure pursuant to paragraph (7) of  
35 subdivision (a), the department shall convene an advisory  
36 committee consisting of representatives of the beverage industry,  
37 beverage container manufacturers, environmental organizations,  
38 the recycling industry, nonprofit organizations, and retailers, to  
39 advise the department on the most cost-effective and efficient



1 method of the expenditure of the funds for that education and  
2 information campaign.

3 SEC. 293. Section 30610.3 of the Public Resources Code is  
4 amended to read:

5 30610.3. (a) Whenever the commission determines (1) that  
6 public access opportunities through an existing subdivided area,  
7 which has less than 75 percent of the subdivided lots built upon,  
8 or an area proposed to be subdivided are not adequate to meet the  
9 public access requirements of this division and (2) that individual  
10 owners of vacant lots in ~~such an area~~ *those areas* do not have the  
11 legal authority to comply with ~~such~~ public access requirements as  
12 a condition of securing a coastal development permit for the reason  
13 that some other person or persons has ~~such~~ legal authority, the  
14 commission shall implement ~~such~~ public access requirements as  
15 provided in this section.

16 (b) The commission, on its own motion or at the request of an  
17 affected property owner, shall identify an area as meeting the  
18 criteria specified in subdivision (a). After ~~such~~ an area has been  
19 identified, the commission shall, after appropriate public hearings  
20 adopt a specific public access program for ~~such~~ *the* area and shall  
21 request that the State Coastal Conservancy, established pursuant  
22 to Division 21 (commencing with Section 31000), implement ~~such~~  
23 *the* program. ~~Such~~ *The* access program shall include, but not be  
24 limited to, the identification of specific land areas and view  
25 corridors to be used for public access, any facilities or other  
26 development deemed appropriate, the commission's  
27 recommendations regarding the manner in which public access  
28 will be managed, and the types of permitted public uses. The State  
29 Coastal Conservancy shall, pursuant to its authority, implement  
30 ~~such~~ *the* public access program.

31 (c) The State Coastal Conservancy shall be authorized to  
32 expend funds when appropriated from the Coastal Access Account  
33 for the purchase of lands and view easements and to pay for any  
34 development needed to carry out the public access program  
35 specified in subdivision (a). Not more than 5 percent of the amount  
36 of funds necessary to carry out each ~~such~~ public access program  
37 may be provided as a grant to the State Coastal Conservancy for  
38 its administrative costs incurred in carrying out the access  
39 program.



(d) The State Coastal Conservancy may enter into any agreement it deems necessary and appropriate with any state or local public agency or with a private association authorized to perform ~~such~~ *those* functions for the operation and maintenance of any access facilities acquired or developed pursuant to this section.

(e) Every person receiving a coastal development permit or a certificate of exemption for development on any vacant lot within an area designated pursuant to this section shall, prior to the commencement of construction, pay to the commission, for deposit in the Coastal Access Account, an “in-lieu” public access fee. The amount of each ~~such~~ fee shall be determined by dividing the cost of acquiring the specified lands and view easements by the total number of lots within the identified area. The proportion of the acquisition cost that can be allocated to lots built upon pursuant to permits that were not subject to public access conditions under this division or the California Coastal Zone Conservation Act of 1972 (former Division 18 (commencing with Section 27000)) shall be paid from the Coastal Access Account. An “in-lieu” public access fee may be in the form of an appropriate dedication, in which event the lots to which ~~such~~ *the* dedication can be credited shall not be counted toward the total number of lots used in arriving at the “in-lieu” public access fee share for each remaining lot.

(f) For purposes of determining the acquisition costs specified in subdivision (e), the State Coastal Conservancy may, in the absence of a fixed price agreed to by both the State Coastal Conservancy and the seller, specify an estimated cost based on a formal appraisal of the value of the interest proposed to be acquired. The appraisal shall be conducted by an independent appraiser under contract with the State Coastal Conservancy and shall be completed within 120 days of the adoption of the specific public access program by the commission pursuant to subdivision (b). ~~Such~~ *The* appraisal shall be deemed suitable for all purposes of the Property Acquisition Law (Part 11 (commencing with Section 15850 of the Government Code)). For every year following public acquisition of the interests in land specified as part of a public access program and prior to payment of the required “in-lieu” fee, a carrying cost factor equal to 5 percent of the share attributable to each lot shall be added to any unpaid “in-lieu” public access fee; provided, however, that a lot owner



1 ~~in such an area~~ may pay the “in-lieu” public access fee at any time  
2 after public acquisition in order to avoid payment of the carrying  
3 cost factor.

4 (g) No provision of this section may be applied within any  
5 portion of the unincorporated area in the County of Sonoma,  
6 commonly known as the Sea Ranch.

7 SEC. 294. The heading of Article 1 (commencing with  
8 Section 32630) of Division 22.9 of the Public Resources Code is  
9 amended to read:

10 ~~Article 1. General Provisions and Definitions~~

11  
12  
13 *CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS*

14  
15 SEC. 295. The heading of Article 2 (commencing with  
16 Section 32633) of Division 22.9 of the Public Resources Code is  
17 amended to read:

18  
19 ~~Article 2. The San Diego River Conservancy~~

20  
21 *CHAPTER 2. THE SAN DIEGO RIVER CONSERVANCY*

22  
23 SEC. 296. The heading of Article 3 (commencing with  
24 Section 32639) of Division 22.9 of the Public Resources Code is  
25 amended to read:

26  
27 ~~Article 3. Powers and Duties~~

28  
29 *CHAPTER 3. POWERS AND DUTIES*

30  
31 SEC. 297. The heading of Article 4 (commencing with  
32 Section 32657) of Division 22.9 of the Public Resources Code is  
33 amended to read:

~~Article 4. San Diego River Conservancy Fund~~

*CHAPTER 4. SAN DIEGO RIVER CONSERVANCY FUND*

SEC. 298. The heading of Article 5 (commencing with Section 32661) of Division 22.9 of the Public Resources Code is amended to read:

~~Article 5. Repeal~~

*CHAPTER 5. REPEAL*

SEC. 299. Section 36725 of the Public Resources Code is amended to read:

36725. (a) The Fish and Game Commission may designate, delete, or modify state marine recreational management areas established by the commission for hunting purposes, state marine reserves, and state marine conservation areas. The Fish and Game Commission shall consult with, and secure concurrence from, the State ~~Park~~ Parks and Recreation Commission prior to modifying or deleting state marine reserves and state marine conservation areas designated by the State ~~Park~~ Parks and Recreation Commission. The Fish and Game Commission shall not delete or modify state marine recreational management areas designated by the State ~~Park~~ Parks and Recreation Commission.

(b) The State ~~Park~~ Parks and Recreation Commission may designate, delete, or modify state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, and state marine recreational management areas. The State ~~Park~~ Parks and Recreation Commission may not designate, delete, or modify a state marine reserve, state marine park, or state marine conservation area without the concurrence of the Fish and Game Commission on any proposed restrictions upon, or change in, the use of living marine resources.

(c) If an unresolved conflict exists between the Fish and Game Commission and the State ~~Park~~ Parks and Recreation Commission regarding a state marine reserve, state marine park, or state marine conservation area, the Secretary of the Resources Agency may reconcile the conflict.

(d) The State Water Resources Control Board may designate, delete, or modify state water quality protection areas.

(e) The Fish and Game Commission, State ~~Park~~ *Parks* and Recreation Commission, and State Water Resources Control Board each may restrict or prohibit recreational uses and other human activities in the MMAs for the benefit of the resources therein, except in the case of restrictions on the use of living marine resources. Pursuant to this section, and consistent with Section 2860 of the Fish and Game Code, the Fish and Game Commission may regulate commercial and recreational fishing and any other taking of marine species in MMAs.

(f) (1) The Department of Fish and Game may manage state marine reserves, state marine conservation areas, state marine recreational management areas established for hunting purposes and, if requested by the State Water Resources Control Board, state water quality protection areas.

(2) The Department of Parks and Recreation may manage state marine reserves, state marine parks, state marine conservation areas, state marine cultural preservation areas, and state marine recreational management areas. Department authority over units within the state park system shall extend to units of the state MMAs system that are managed by the department.

(3) The State Water Resources Control Board and the California regional water quality control boards may take appropriate actions to protect state water quality protection areas. The State Water Resources Control Board may request the Department of Fish and Game or the Department of Parks and Recreation to take appropriate management action.

SEC. 300. Section 40000 of the Public Resources Code is amended to read:

40000. The Legislature hereby finds and declares all of the following:

(a) In 1988, Californians disposed of over 38 million tons of solid waste, an amount ~~which~~ *that* is expected to grow if existing solid waste policies are continued. This amounts to more than 1,500 pounds of waste per person living in the state, more than any other state in the country and over twice the per-capita rate of most other industrialized ~~countries~~ *countries*.

1 (b) Over 90 percent of California's solid waste currently is  
2 disposed of in landfills, some of which pose a threat to  
3 groundwater, air quality, and public health.

4 (c) While California will exhaust most of its remaining landfill  
5 space by the mid-1990's, there presently is no coherent state policy  
6 to ensure that the state's solid waste is managed in an effective and  
7 environmentally sound manner for the remainder of the 20th  
8 century and beyond.

9 (d) The amount of solid waste generated in the state coupled  
10 with diminishing landfill space and potential adverse  
11 environmental impacts from landfilling constitutes an urgent need  
12 for state and local agencies to enact and implement an aggressive  
13 new integrated waste management program.

14 (e) The reduction, recycling, or reuse of solid waste generated  
15 in the state will, in addition to preserving landfill capacity in  
16 California, serve to conserve water, energy, and other natural  
17 resources within this state, and to protect the state's environment.

18 SEC. 301. Section 41732 of the Public Resources Code is  
19 amended to read:

20 41732. (a) City, county, and regional agency nondisposal  
21 facility elements prepared pursuant to Section 41730, 41731, or  
22 41750.1, as the case may be, shall include a description of any new  
23 solid waste facilities and the expansion of existing solid waste  
24 facilities that will be needed to implement the jurisdiction's source  
25 reduction and recycling element and to thereby meet the diversion  
26 requirements of Section 41780. The nondisposal facility element  
27 may include the identification of specific locations or general areas  
28 for new solid waste facilities that will be needed to implement the  
29 ~~jurisdiction's~~ *jurisdiction's* source reduction and recycling  
30 element.

31 (b) In complying with the requirements of subdivision (a), the  
32 jurisdiction shall utilize the pertinent information ~~which~~ *that* is  
33 available to it at the time that the nondisposal facility element is  
34 prepared.

35 SEC. 302. Section 42330 of the Public Resources Code is  
36 amended to read:

37 42330. (a) The board shall grant a waiver from the  
38 postconsumer material content requirement of subdivision (a) of  
39 Section 42310, but not from any other requirement of Section  
40 42310, if the board finds one or more *of* the following:

1 (1) The rigid plastic packaging containers cannot meet the  
2 postconsumer material requirements of subdivision (a) of Section  
3 42310 and remain in compliance with applicable provisions of  
4 regulations adopted by the Food and Drug Administration or other  
5 state or federal laws or regulations.

6 (2) It is technologically infeasible to use rigid plastic packaging  
7 containers ~~which~~ *that* achieve the postconsumer material  
8 requirement of subdivision (a) of Section 42310.

9 (b) The board shall grant a waiver from all of the requirements  
10 of Section 42310 if the board finds either of the following:

11 (1) Less than 60 percent of the single-family homes in the state  
12 on and after January 1, 1994, have curbside collection programs  
13 ~~which~~ *that* include beverage container recycling.

14 (2) At least 50 percent, by number, of a manufacturer's rigid  
15 plastic packaging containers sold or offered for sale in the state in  
16 the current calendar year achieve the postconsumer material  
17 requirements of subdivision (a) of Section 42310 and all of the  
18 manufacturer's rigid plastic packaging containers will comply  
19 with the requirements of Section 42310 on or before January 1,  
20 1996.

21 (c) The board shall grant a one-year waiver from all of the  
22 requirements of Section 42310 for products packaged in rigid  
23 plastic packaging containers that are introduced and sold in this  
24 state after January 1, 1995.

25 SEC. 303. Section 42463 of the Public Resources Code is  
26 amended to read:

27 42463. For the purposes of this chapter, the following terms  
28 have the following meanings, unless the context clearly requires  
29 otherwise:

30 (a) "Account" means the Electronic Waste Recovery and  
31 Recycling Account created in the Integrated Waste Management  
32 Fund under Section 42476.

33 (b) "Authorized collector" means any of the following:

34 (1) A city, county, or district that collects covered electronic  
35 devices.

36 (2) A person or entity that is required or authorized by a city,  
37 county, or district to collect covered electronic devices pursuant to  
38 the terms of a contract, license, permit, or other written  
39 authorization.





1 (3) A nonprofit organization that collects or accepts covered  
2 electronic devices.

3 (4) A manufacturer or agent of the manufacturer that collects,  
4 consolidates, and transports covered electronic devices for  
5 recycling from consumers, businesses, institutions, and other  
6 generators.

7 (5) Any entity that collects, handles, consolidates, and  
8 transports covered electronic devices and has filed a notification  
9 with the department pursuant to Article 7 (commencing with  
10 Section 66273.80) of Chapter 23 of Division 4.5 of Title 22 of the  
11 California Code of Regulations.

12 (c) “Board” means the California Integrated Waste  
13 Management Board.

14 (d) (1) “Consumer” means a purchaser or owner of a covered  
15 electronic device. “Consumer” also includes a business,  
16 corporation, limited partnership, nonprofit organization, or  
17 governmental entity, but does not include an entity involved in a  
18 wholesale transaction between a distributor and retailer.

19 (2) (A) “Consumer” does not include a manufacturer who  
20 purchases specialty or medical electronic equipment that is a  
21 covered electronic device.

22 (B) For purposes of this paragraph, “medical electronic  
23 equipment” includes, but is not limited to, radiotherapy  
24 equipment, cardiology equipment, dialysis equipment, pulmonary  
25 ventilators, nuclear medicine equipment, laboratory equipment  
26 for in-vitro diagnosis, analyzers, and freezers.

27 (C) For purposes of this paragraph, “specialty electronic  
28 equipment” includes, but is not limited to, smoke detectors,  
29 heating regulators, and thermostats.

30 (e) “Department” means the Department of Toxic Substances  
31 Control.

32 (f) (1) “Covered electronic device” means a cathode ray tube,  
33 cathode ray tube device, flat panel screen, or any other similar  
34 video display device with a screen size that is greater than four  
35 inches in size measured diagonally and which the department  
36 determines, when discarded or disposed, would be a hazardous  
37 waste pursuant to Chapter 6.5 (commencing with Section 25100)  
38 of Division 20 of the Health and Safety Code.

39 (2) “Covered electronic device” does not include an  
40 automobile or a large piece of commercial or industrial equipment,

1 including, but not limited to, commercial medical equipment, that  
2 contains a cathode ray tube, cathode ray tube device, flat panel  
3 screen, or other similar video display device that is contained  
4 within, and is not separate from, the larger piece of industrial or  
5 commercial equipment.

6 (g) “Covered electronic waste” or “covered e-waste” means  
7 a covered electronic device that is discarded or disposed.

8 (h) “Covered electronic waste recycling fee” or “covered  
9 e-waste recycling fee” means the fee imposed pursuant to Article  
10 3 (commencing with Section 42464).

11 (i) “Covered electronic waste recycler” or “covered e-waste  
12 recycler” means any of the following:

13 (1) A person who engages in the manual or mechanical  
14 separation of covered electronic devices to recover components  
15 and commodities contained therein for the purpose of reuse or  
16 recycling.

17 (2) A person who changes the physical or chemical  
18 composition of a covered electronic device, in accordance with the  
19 requirements of Chapter 6.5 (commencing with Section 25100) of  
20 Division 20 of the Health and Safety Code and the regulations  
21 adopted pursuant to that chapter, by deconstructing, size  
22 reduction, crushing, cutting, sawing, compacting, shredding, or  
23 refining for purposes of segregating components, for purposes of  
24 recovering or recycling those components, and who arranges for  
25 the transport of those components to an end user.

26 (3) A manufacturer who meets any conditions established by  
27 this chapter and Chapter 6.5 (commencing with Section 25100) of  
28 Division 20 of the Health and Safety Code for the collection or  
29 recycling of covered electronic waste.

30 (j) “Electronic waste recovery payment” means an amount  
31 established and paid by the board pursuant to Section 42477.

32 (k) “Electronic waste recycling payment” means a payment  
33 made by the board to an authorized collector of covered electronic  
34 waste pursuant to Section 42477.

35 (l) “Electronic waste recycling payment” means an amount  
36 established and paid by the board pursuant to Section 42478.

37 (m) “Hazardous material” has the same meaning as defined in  
38 Section 25501 of the Health and Safety Code.

39 (n) “Manufacturer” means ~~any~~ *either* of the following:

40 (A)



1 (1) A person who manufactures a covered electronic device  
2 sold in this state.

3 ~~(B)~~

4 (2) A person who sells a covered electronic device in this state  
5 under a person's brand name.

6 (o) "Retailer" means a person who sells a covered electronic  
7 device in the state to a consumer but who did not manufacture the  
8 device. "Retailer" includes a manufacturer of a covered  
9 electronic device who sells that covered electronic device directly  
10 to a consumer through any means, including, but not limited to,  
11 transactions conducted through sales outlets, catalogs, or the  
12 Internet, or any other, similar electronic means, but does not  
13 include a sale that is a wholesale transaction with a distributor or  
14 retailer.

15 (p) (1) "Sell" or "sale" means any transfer for consideration  
16 of title or of the right to use, by lease or sales contract, including,  
17 but not limited to, transactions conducted through sales outlets,  
18 catalogs, or the Internet, or any other, similar electronic means, but  
19 does not include a wholesale transaction with a distributor or a  
20 retailer.

21 (2) For purposes of this subdivision and subdivision ~~(n)~~ (o),  
22 "distributor" means a person who sells a covered electronic  
23 device to a retailer.

24 SEC. 304. Section 42475.2 of the Public Resources Code is  
25 amended to read:

26 42475.2. (a) The board and the department may adopt  
27 regulations to implement this chapter as emergency regulations.

28 (b) The emergency regulations adopted pursuant to this chapter  
29 shall be adopted by the board and the department in accordance  
30 with Chapter 3.5 (commencing with Section 11340) of Part 1 of  
31 Division 3 of Title 2 of the Government Code, and for the purposes  
32 of that chapter, including Section 11349.6 of the Government  
33 Code, the adoption of these regulations is an emergency and shall  
34 be considered by the Office of Administrative Law as necessary  
35 for the immediate preservation of the public peace, health, and  
36 safety, and general welfare. Notwithstanding Chapter 3.5  
37 (commencing with Section 11340) of Part 1 of Division 3 of Title  
38 2 of the Government Code, any emergency regulations adopted by  
39 the *board and the* department pursuant to this section shall be filed  
40 with, but not be repealed by, the Office of Administrative Law and

1 shall remain in effect for a period of two years or until revised by  
2 the *board or the* department ~~or the board~~, whichever occurs sooner.

3 SEC. 305. Section 45000 of the Public Resources Code is  
4 amended to read:

5 45000. (a) Except as provided in subdivision (b), the  
6 enforcement agency may issue an administrative order requiring  
7 the owner or operator of a solid waste facility to take corrective  
8 action as necessary to abate a nuisance, or to protect human health  
9 and safety or the environment.

10 (b) An administrative order shall not be issued for any minor  
11 violation ~~which~~ *that* is corrected immediately in the presence of  
12 the inspector. Immediate compliance in that manner shall be noted  
13 in the inspection report.

14 (c) The enforcement agency or the board may contract for  
15 corrective action after an order issued pursuant to subdivision (a)  
16 becomes final and the owner or operator fails to comply with the  
17 order by the date specified in the order.

18 (d) If ~~a~~ *an* enforcement agency or the board expends any funds  
19 pursuant to subdivision (b), the owner or operator of the solid  
20 waste facility shall reimburse the enforcement agency or the board  
21 for the amount expended, including, but not limited to, a  
22 reasonable amount for contract administration, and an amount  
23 equal to the interest that would have been earned on the expended  
24 funds. The amount expended shall be recoverable in a civil action  
25 by the Attorney General, upon request of the local enforcement  
26 agency or the board.

27 (e) Any contract for corrective action entered into by the board  
28 is exempt from approval by the Department of General Services  
29 pursuant to Section 10295 of the Public Contract Code.

30 (f) Any corrective action shall incorporate by reference any  
31 applicable waste discharge requirements issued by the state water  
32 board or a regional water board, and shall be consistent with all  
33 applicable water quality control plans adopted pursuant to Section  
34 13170 of, and Article 3 (commencing with Section 13240) of  
35 Chapter 4 of Division 7 of, the Water Code, and state policies for  
36 water quality control adopted pursuant to Article 3 (commencing  
37 with Section 13140) of Chapter 3 of Division 7 of the Water Code,  
38 existing at the time of the corrective action or proposed corrective  
39 action.

1 SEC. 306. Section 45010 of the Public Resources Code is  
2 amended to read:

3 45010. The Legislature hereby finds and declares as follows:

4 (a) It is the intent of the Legislature that administrative civil  
5 penalties should be imposed on the operators of solid waste  
6 facilities in a judicious manner and should only be imposed after  
7 all feasible efforts have been made by enforcement agencies to  
8 provide proper notice of violations to alleged violators as well as  
9 a reasonable opportunity to bring solid waste facilities into  
10 compliance with this division.

11 (b) Any funds collected through the imposition of civil  
12 penalties pursuant to this article shall not be deposited in the  
13 General Fund of the local enforcement agency, but instead, shall  
14 be deposited in a segregated account and used exclusively for the  
15 purpose of bringing a solid waste facility into compliance with this  
16 division or to remediate an abandoned solid waste disposal ~~sites~~  
17 *site*.

18 (c) Any civil penalties paid to the board pursuant to this article  
19 shall be deposited in the Solid Waste Disposal Site Cleanup Trust  
20 Fund created pursuant to Section 48027.

21 SEC. 307. Section 50000 of the Public Resources Code is  
22 amended to read:

23 50000. (a) Until an integrated waste management plan has  
24 been approved by the California Integrated Waste Management  
25 Board pursuant to Division 30 (commencing with Section 40000),  
26 no person shall establish a new solid waste facility or  
27 transformation facility or expand an existing solid waste facility  
28 or transformation facility ~~which~~ *that* will result in a significant  
29 increase in the amount of solid waste handled at the facility  
30 without a certification by the enforcement agency that one of the  
31 following has occurred:

32 (1) The facility is identified and described in, or found to  
33 conform with, a county solid waste management plan ~~which~~ *that*  
34 was in compliance with statutes and regulations in existence on  
35 December 31, 1989, adopted pursuant to former Title 7.3  
36 (commencing with Section 66700) of the Government Code as  
37 that former statute read on December 31, 1989. The conformance  
38 finding with that plan shall be in accordance with the procedure for  
39 a finding of conformance ~~which~~ *that* was set forth in the plan prior  
40 to January 1, 1990.

(2) The facility is identified and described in the most recent county solid waste management plan ~~which~~ *that* has been approved by the county and by a majority of the cities within the county ~~which~~ *that* contain a majority of the population of the incorporated area of the county, except in those counties ~~which~~ *that* have only two cities, in which case, the plan has been approved by the county and by the city ~~which~~ *that* contains a majority of the population of the incorporated area of the county.

(3) Pursuant to the procedures in subdivision (b), the facility has been approved by the county and by a majority of the cities within the county ~~which~~ *that* contain a majority of the population of the incorporated area of the county, except in those counties ~~which~~ *that* have only two cities, in which case, the facility has been approved by the county and by the city ~~which~~ *that* contains a majority of the population of the incorporated area of the county.

(4) The facility is a material recovery facility and the site identification and description of the facility ~~has~~ *have* been submitted to the task force created pursuant to Section 40950 for review and comment, pursuant to the procedures set forth in subdivision (c). For purposes of this paragraph, “material recovery facility” means a transfer station ~~which~~ *that* is designed to, and, as a condition of its permit, shall, recover for reuse or recycling at least 15 percent of the total volume of material received by the facility.

(5) The facility is identified and described in the countywide siting element ~~which~~ *that* has been approved pursuant to Section 41721.

(b) (1) The review and approval of a solid waste facility or facility transformation facility ~~which~~ *that* has not been identified or described in a county solid waste management plan shall be initiated by submittal by the person or agency proposing the facility of a site identification and description to the county board of supervisors.

(2) The county shall submit the site identification and description to each city within the county within 20 days from the date that the site identification and description is submitted to the county board of supervisors. The county and each city shall approve or disapprove by resolution the site identification and description within 90 days from the date that the site identification and description ~~is~~ *are* initially submitted to the county or city. Each

city shall notify the county board of supervisors of its decision within that 90-day period. If the county or a city fails to approve or disapprove the site identification and description within 90 days, the city or county shall be deemed to have approved the site identification and description as submitted.

(3) If a city or county disapproves the site identification and description, the city or county shall mail notice of its decision by first-class mail to the person or agency requesting the approval within 10 days of the disapproval by the city or county, stating its reasons for the disapproval.

(4) No county or city shall disapprove a proposed site identification and description for a new solid waste facility or transformation facility or an expanded solid waste facility or transformation facility ~~which~~ *that* will result in a significant increase in the amount of solid waste handled at the facility unless it determines, based upon substantial evidence in the record, that there will be one or more significant adverse impacts within its boundaries from the proposed project.

(5) Within 45 days from the date of a decision by a city or county to disapprove a site identification and description, or a decision by the board not to concur in the issuance of a permit pursuant to Section 44009, any person may file with the superior court a writ of mandate for review of the decision. The evidence before the court shall consist of the record before the city or county ~~which~~ *that* disapproved the site identification and description or the record before the board in its determination not to concur in issuance of the permit. Section 1094.5 of the Code of Civil Procedure shall govern the proceedings conducted pursuant to this subdivision.

(c) To initiate the review and comment by the task force required by paragraph (4) of subdivision (a) and subdivision (d), the person or agency proposing the facility shall submit the site identification and description of the facility to the task force. Within 90 days after the site identification and description ~~is~~ *are* submitted to the task force, the task force shall meet and comment on the facility in writing. Those comments shall include, but are not limited to, the relationship between the proposed new or expanded material recovery facility and the requirements of Section 41780. The task force shall transmit those comments to the applicant, to the county, and to all of the cities in the county.



1 (d) On or before February 1, 1991, each county, by vote of the  
2 board of supervisors and the majority of the cities in the county  
3 containing a majority of the population of the incorporated area of  
4 the county, except in those counties ~~which~~ *that* have only two  
5 cities, in which case the vote is subject to approval of the city ~~which~~  
6 *that* contains a majority of the population of the incorporated area  
7 of the county, shall adopt two resolutions after holding a public  
8 hearing. One resolution shall address solid waste transfer facilities  
9 ~~which~~ *that* are designed to, and, as a condition of their permits,  
10 shall, recover for reuse or recycling less than 15 percent of the total  
11 volume of material received by the facility and ~~which~~ *that* serve  
12 more than one jurisdiction. The second resolution shall address  
13 solid waste transfer facilities ~~which~~ *that* are designed to, and, as a  
14 condition of their permits, shall, recover for reuse or recycling less  
15 than 15 percent of the total volume of material received by the  
16 facility and ~~which~~ *that* serve only one jurisdiction. These  
17 resolutions shall specify whether the facilities shall be subject to  
18 the review and approval process described in subdivision (b) or the  
19 review and comment process described in subdivision (c). If the  
20 resolutions required by this subdivision are not adopted on or  
21 before February 1, 1991, those facilities shall be subject to the  
22 review process described in subdivision (c).

23 For purposes of this subdivision, a facility serves only one  
24 jurisdiction if it serves only one city, only the unincorporated area  
25 of one county, or only one city and county.

26 SEC. 308. Section 71210 of the Public Resources Code is  
27 amended to read:

28 71210. (a) The commission, in consultation with the board,  
29 the United States Coast Guard, and a technical advisory group  
30 made up of interested persons, including, but not limited to,  
31 shipping and port representatives, shall sponsor a pilot ~~program~~  
32 *programs* for the purpose of evaluating alternatives for treating  
33 and otherwise managing ballast water. The goal of this effort shall  
34 be the reduction or elimination of the discharge of nonindigenous  
35 species into the coastal waters of the state or into waters that may  
36 impact coastal waters of the state. Whenever possible, the pilot  
37 programs shall include funding from federal grants and  
38 appropriations, vendor funding, and state bond funds, including,  
39 but not limited to, bond funds from the Water Security, Clean  
40 Drinking Water, Coastal and Beach Protection Act of 2002.

1 Priority shall be given to projects to test and evaluate treatment  
2 technologies that can be used to prevent the introduction and  
3 spread of nonindigenous aquatic species into coastal waters of the  
4 state by ship-mediated vectors.

5 (b) The commission shall provide biennial summaries to the  
6 Legislature and the public, beginning on or before January 31,  
7 2005, of the results of the pilot programs conducted pursuant to  
8 this section. These summary reports shall include, but not be  
9 limited to, a description of the projects, the relative effectiveness  
10 of the technologies examined in minimizing the discharge of  
11 nonindigenous species, and the costs of implementing the  
12 technologies.

13 SEC. 309. Section 280.5 of the Public Utilities Code is  
14 amended to read:

15 280.5. (a) Of the revenues from fees collected pursuant to  
16 Section 14666.8 of the Government Code after the operative date  
17 of this section, except for revenues from fees from a lease  
18 agreement for access to Department of Transportation property or  
19 a lease agreement existing prior to the operative date of the section,  
20 15 percent shall be available, upon appropriation by the  
21 Legislature, for the purpose of addressing the state's digital divide.

22 (b) Revenues described in subdivision (a) shall be deposited in  
23 the Digital Divide Account, which is hereby established in the  
24 California Teleconnect Fund Administrative Committee Fund  
25 established pursuant to Section 270, to be used only for digital  
26 divide pilot projects. Not more than 5 percent of the revenues  
27 described in subdivision (a); may be used to pay the costs incurred  
28 in connection with the administration of digital divide pilot  
29 projects by the commission.

30 (c) (1) The Digital Divide Grant Program is hereby  
31 established subject to the availability of funding pursuant to this  
32 section. The commission may not implement the grant program  
33 until the commission projects that at least five hundred thousand  
34 dollars (\$500,000) will be available in the Digital Divide Account  
35 during the calendar year following implementation, based on  
36 money collected pursuant to Section 14666.8 of the Government  
37 Code.

38 (2) The commission shall provide grants pursuant to this  
39 subdivision on a competitive basis subject to criteria to be  
40 established by the commission and in a way that disburses the

1 funds widely, including urban and rural areas. Grants shall be  
2 awarded to community-based nonprofit organizations that are  
3 exempt from taxation under Section 501(c)(3) of the Internal  
4 Revenue Code for the purpose of funding community technology  
5 programs.

6 (3) Recipients of grants pursuant to this subdivision shall report  
7 to the commission annually on the effectiveness of the grant  
8 program.

9 (4) The commission shall report to the Legislature and the  
10 Governor annually on the effectiveness of the program  
11 administered pursuant to this subdivision.

12 (d) For purposes of this section, “community technology  
13 programs” means a program that is engaged in diffusing  
14 technology in local communities and training local communities  
15 in the use of technology, especially local communities that  
16 otherwise would have no access or limited access to the Internet  
17 and other technologies.

18 (e) For purposes of this section, “digital divide projects”  
19 means community technology programs involved in activities that  
20 include, but are not limited to, the following:

21 (1) Providing open access to and opportunities for training in  
22 technology.

23 (2) Developing content relevant to the interests and wants of  
24 the local community.

25 (3) Preparing youth for opportunities in the new economy  
26 through multimedia training and skills.

27 (4) Harnessing technology for e-government services.

28 SEC. 310. Section 353.2 of the Public Utilities Code is  
29 amended to read:

30 353.2. (a) As used in this article, ~~“ultra-clean~~ “*ultra-clean*  
31 ~~and low-emission~~ *low-emission* distributed generation” means any  
32 electric generation technology that meets both of the following  
33 criteria:

34 (1) Commences initial operation between January 1, 2003, and  
35 December 31, 2008.

36 (2) Produces zero emissions during its operation or produces  
37 emissions during its operation that are equal to or less than the  
38 2007 State Air Resources Board emission limits for distributed  
39 generation, except that technologies operating by combustion

1 must operate in a combined heat and power application with a  
2 60-percent system efficiency on a higher heating value.

3 (b) In establishing rates and fees, the commission may consider  
4 energy efficiency and emissions performance to encourage early  
5 compliance with air quality standards established by the State Air  
6 Resources Board for ~~ultra-clean~~ *ultra-clean* and ~~low-emission~~  
7 *low-emission* distributed generation.

8 SEC. 311. Section 372 of the Public Utilities Code is amended  
9 to read:

10 372. (a) It is the policy of the state to encourage and support  
11 the development of cogeneration as an efficient, environmentally  
12 beneficial, competitive energy resource that will enhance the  
13 reliability of local generation supply, and promote local business  
14 growth. Subject to the specific conditions provided in this section,  
15 the commission shall determine the applicability to customers of  
16 uneconomic costs as specified in Sections 367, 368, 375, and 376.  
17 Consistent with this state policy, the commission shall provide that  
18 these costs shall not apply to any of the following:

19 (1) To load served onsite or under an over the fence  
20 arrangement by a nonmobile self-cogeneration or cogeneration  
21 facility that was operational on or before December 20, 1995, or  
22 by increases in the capacity of ~~such~~ a facility to the extent that ~~such~~  
23 *the* increased capacity was constructed by an entity holding an  
24 ownership interest in or operating the facility and does not exceed  
25 120 percent of the installed capacity as of December 20, 1995,  
26 provided that prior to June 30, 2000, the costs shall apply to over  
27 the fence arrangements entered into after December 20, 1995,  
28 between unaffiliated parties. For the purposes of this subdivision,  
29 “affiliated” means any person or entity that directly, or indirectly  
30 through one or more intermediaries, controls, is controlled by, or  
31 is under common ~~on~~ control with another specified entity.  
32 “Control” means either of the following:

33 (A) The possession, directly or indirectly, of the power to direct  
34 or to cause the direction of the management or policies of a person  
35 or entity, whether through an ownership, beneficial, contractual,  
36 or equitable interest.

37 (B) Direct or indirect ownership of at least 25 percent of an  
38 entity, whether through an ownership, beneficial, or equitable  
39 interest.

1 (2) To load served by onsite or under an over the fence  
2 arrangement by a nonmobile self-cogeneration or cogeneration  
3 facility for which the customer was committed to construction as  
4 of December 20, 1995, provided that the facility was substantially  
5 operational on or before January 1, 1998, or by increases in the  
6 capacity of ~~such~~ a facility to the extent that the increased capacity  
7 was constructed by an entity holding an ownership interest in or  
8 operating the facility and does not exceed 120 percent of the  
9 installed capacity as of January 1, 1998, provided that prior to June  
10 30, 2000, the costs shall apply to over the fence arrangements  
11 entered into after December 20, 1995, between unaffiliated  
12 parties.

13 (3) To load served by existing, new, or portable emergency  
14 generation equipment used to serve the customer's load  
15 requirements during periods when utility service is unavailable,  
16 provided ~~such~~ the emergency generation is not operated in parallel  
17 with the integrated electric grid, except on a momentary parallel  
18 basis.

19 (4) After June 30, 2000, to any load served onsite or under an  
20 over the fence arrangement by any nonmobile self-cogeneration or  
21 cogeneration facility.

22 (b) Further, consistent with state policy, with respect to  
23 self-cogeneration or cogeneration deferral agreements, the  
24 commission shall do the following:

25 (1) Provide that a utility shall execute a final self-cogeneration  
26 or cogeneration deferral agreement with any customer that, on or  
27 before December 20, 1995, had executed a letter of intent (or  
28 similar documentation) to enter into the agreement with the utility,  
29 provided that the final agreement shall be consistent with the terms  
30 and conditions set forth in the letter of intent and the commission  
31 shall review and approve the final agreement.

32 (2) Provide that a customer that holds a self-cogeneration or  
33 cogeneration deferral agreement that was in place on or before  
34 December 20, 1995, or that was executed pursuant to paragraph (1)  
35 in the event the agreement expires, or is terminated, may do any  
36 of the following:

37 (A) Continue through December 31, 2001, to receive utility  
38 service at the rate and under terms and conditions applicable to the  
39 customer under the deferral agreement that, as executed, includes



1 an allocation of uneconomic costs consistent with subdivision (e)  
2 of Section 367.

3 (B) Engage in a direct transaction for the purchase of electricity  
4 and pay uneconomic costs consistent with Sections 367, 368, 375,  
5 and 376.

6 (C) Construct a self-cogeneration or cogeneration facility of  
7 approximately the same capacity as the facility previously  
8 deferred, provided that the costs provided in Sections 367, 368,  
9 375, and 376 shall apply consistent with subdivision (e) of Section  
10 367, unless otherwise authorized by the commission pursuant to  
11 subdivision (c).

12 (3) Subject to the fire wall described in subdivision (e) of  
13 Section 367, provide that the ratemaking treatment for  
14 self-cogeneration or cogeneration deferral agreements executed  
15 prior to December 20, 1995, or executed pursuant to paragraph (1)  
16 shall be consistent with the ratemaking treatment for the contracts  
17 approved before January 1995.

18 (c) The commission shall authorize, within 60 days of the  
19 receipt of a joint application from the serving utility and one or  
20 more interested parties, applicability conditions as follows:

21 (1) The costs identified in Sections 367, 368, 375, and 376 shall  
22 not, prior to June 30, 2000, apply to load served onsite by a  
23 nonmobile self-cogeneration or cogeneration facility that became  
24 operational on or after December 20, 1995.

25 (2) The costs identified in Sections 367, 368, 375, and 376 shall  
26 not, prior to June 30, 2000, apply to any load served under over the  
27 fence arrangements entered into after December 20, 1995,  
28 between unaffiliated entities.

29 (d) For the purposes of this subdivision, all onsite or over the  
30 fence arrangements shall be consistent with Section 218 as it  
31 existed on December 20, 1995.

32 (e) To facilitate the development of new microcogeneration  
33 applications, electrical corporations may apply to the commission  
34 for a financing order to finance the transition costs to be recovered  
35 from customers employing the applications.

36 (f) To encourage the continued development, installation, and  
37 interconnection of clean and efficient self-generation and  
38 cogeneration resources, to improve system reliability for  
39 consumers by retaining existing generation and encouraging new  
40 generation to connect to the electric grid, and to increase

1 self-sufficiency of consumers of electricity through the  
2 deployment of self-generation and cogeneration, both of the  
3 following shall occur:

4 (1) The commission and the Electricity Oversight Board shall  
5 determine if any policy or action undertaken by the Independent  
6 System Operator, directly or indirectly, unreasonably discourages  
7 the connection of existing self-generation or cogeneration or new  
8 self-generation or cogeneration to the grid.

9 (2) If the commission and the Electricity Oversight Board find  
10 that any policy or action of the Independent System Operator  
11 unreasonably discourages, the connection of existing  
12 ~~self-generation or~~ *self-generation or* cogeneration or new  
13 self-generation or cogeneration to the grid, the commission and the  
14 Electricity Oversight Board shall undertake all necessary efforts  
15 to revise, mitigate, or eliminate that policy or action of the  
16 Independent System Operator.

17 SEC. 312. Section 374 of the Public Utilities Code is amended  
18 to read:

19 374. (a) In recognition of statutory authority and past  
20 investments existing as of December 20, 1995, and subject to the  
21 fire wall specified *in* subdivision (e) of Section 367, the obligation  
22 to pay the uneconomic costs identified in Sections 367, 368, 375,  
23 and 376 shall not apply to the following:

24 (1) One hundred ten megawatts of load served by irrigation  
25 districts, as hereafter allocated by this paragraph:

26 (A) The 110 megawatts of load shall be allocated among the  
27 service territories of the three largest electrical corporations in the  
28 ratio of the number of irrigation districts in the service territory of  
29 each utility to the total number of irrigation districts in the service  
30 territories of all three utilities.

31 (B) The total amount of load allocated to each utility service  
32 area shall be phased in over five years beginning January 1, 1997,  
33 so that one-fifth of the allocation is allocated in each of the five  
34 years. Any allocation ~~which~~ *that* remains unused at the end of any  
35 year shall be carried over to the succeeding year and added to the  
36 allocation for that year.

37 (C) The load allocated to each utility service territory pursuant  
38 to subparagraph (A) shall be further allocated among the  
39 respective irrigation districts within that service territory by the  
40 California Energy Resources Conservation and Development



Commission. An individual irrigation district requesting ~~such~~ an allocation shall submit to the commission by January 31, 1997, detailed plans that show the load that it serves or will serve and for which it intends to utilize the allocation within the ~~time frame~~ *timeframe* requested. These plans shall include specific information on the irrigation districts' organization for electric distribution, contracts, financing and engineering plans for capital facilities, as well as detailed information about the loads to be served, and shall not be less than eight megawatts or more than 40 megawatts. ~~Provided, provided, however, that~~ any portion of the 110 megawatts that remains unallocated may be reallocated to projects without regard to the 40 megawatts limitation. In making ~~such~~ an allocation among irrigation districts, the Energy Resources Conservation and Development Commission shall assess the viability of each submission and whether it can be accomplished in the timeframe proposed. The Energy Resources Conservation and Development Commission shall have the discretion to allocate the load covered by this section in a manner that best ensures its usage within the allocation period.

(D) At least 50 percent of each year's allocation to a district shall be applied to that portion of load that is used to power pumps for agricultural purposes.

(E) Any load pursuant to this subdivision shall be served by distribution facilities owned by, or leased to, the district in question.

(F) Any load allocated pursuant to paragraph (1) shall be located within the boundaries of the affected irrigation district, or within the boundaries specified in an applicable service territory boundary agreement between an electrical corporation and the affected irrigation district; additionally, the provisions of subparagraph (C) of paragraph (1) shall be applicable to any load within the Counties of Stanislaus or San Joaquin, or both, served by any irrigation district that is currently serving or will be serving retail customers.

(2) Seventy-five megawatts of load served by the Merced Irrigation District hereafter prescribed in this paragraph:

(A) The total allocation provided by this paragraph shall be phased in over five years beginning January 1, 1997, so that one-fifth of the allocation is received in each of the five years. Any allocation ~~which~~ *that* remains unused at the end of any year shall

1 be carried over to the succeeding year and added to the allocation  
2 for that year.

3 (B) Any load to which the provision of this paragraph is  
4 applicable shall be served by distribution facilities owned by, or  
5 leased to, Merced Irrigation District.

6 (C) A load to which the provisions of this paragraph are  
7 applicable shall be located within the boundaries of Merced  
8 Irrigation District as those boundaries existed on December 20,  
9 1995, together with the territory of Castle Air Force Base ~~which~~  
10 *that* was located outside of the district on that date.

11 (D) The total allocation provided by this paragraph shall be  
12 phased in over five years beginning January 1, 1997, with the  
13 exception of load already being served by the district as of June 1,  
14 1996, which shall be deducted from the total allocation and shall  
15 not be subject to the costs provided in Sections 367, 368, 375, and  
16 376.

17 (3) To loads served by irrigation districts, water districts, water  
18 storage districts, municipal utility districts, and other water  
19 agencies ~~which that~~, on December 20, 1995, were members of the  
20 Southern San Joaquin Valley Power Authority, or the Eastside  
21 Power Authority; provided, however, that this paragraph shall be  
22 applicable only to that portion of each district or agency's load that  
23 is used to power pumps ~~which that~~ are owned by that district or  
24 agency as of December 20, 1995, or replacements thereof, and is  
25 being used to pump water for district purposes. The rates  
26 applicable to these districts and agencies shall be adjusted as of  
27 January 1, 1997.

28 (4) The provisions of this subdivision shall no longer be  
29 operative after March 31, 2002.

30 (5) The provisions of paragraph (1) shall not be applicable to  
31 any irrigation district, water district, or water agency described in  
32 paragraph (2) or (3).

33 (6) Transmission services provided to any irrigation district  
34 described in paragraph (1) or (2) shall be provided pursuant to  
35 otherwise applicable tariffs.

36 (7) Nothing in this chapter shall be deemed to grant the  
37 commission any jurisdiction over irrigation districts not already  
38 granted to the commission by existing law.

39 (b) To give the full effect to the legislative intent in enacting  
40 Section 701.8, the costs provided in Sections 367, 368, 375, and

1 376 shall not apply to the load served by preference power  
2 purchased from a federal power marketing agency, or its  
3 successor, pursuant to Section 701.8 as it existed on January 1,  
4 1996, provided *that* the power is used solely for the customer's  
5 own systems load and not for sale. The costs of this provision shall  
6 be borne by all ratepayers in the affected service territory,  
7 notwithstanding the fire wall established in subdivision (e) of  
8 Section 367.

9 (c) To give effect to an existing relationship, the obligation to  
10 pay the uneconomic costs specified in Sections 367, 368, 375, and  
11 376 shall not apply to that portion of the load of the University of  
12 California campus situated in Yolo County that was being served  
13 as of May 31, 1996, by preference power purchased from a federal  
14 marketing agency, or its successor, provided *that* the power is used  
15 solely for the facility load of that campus and not, directly or  
16 indirectly, for sale.

17 SEC. 313. Section 377.2 of the Public Utilities Code is  
18 amended to read:

19 377.2. Notwithstanding Section 377, a facility for the  
20 generation of electricity, or an interest in a facility for the  
21 generation of electricity, that is located outside of this state, is  
22 owned by a public utility that serves 60,000 or fewer customer  
23 accounts in this state, and is not necessary to serve that public  
24 utility's customers in this state, may be disposed of upon approval  
25 of the commission pursuant to Section 851 or upon exemption by  
26 the commission pursuant to Section 853.

27 SEC. 314. Section 379.6 of the Public Utilities Code is  
28 amended to read:

29 379.6. (a) The commission, in consultation with the State  
30 Energy Resources Conservation and Development Commission,  
31 shall until January 1, 2008, administer a self-generation incentive  
32 program for distributed generation resources, in the same form as  
33 exists on January 1, 2004.

34 (b) Notwithstanding subdivision (a), the self-generation  
35 incentive program shall do all of the following:

36 (1) Commencing January 1, 2005, require all  
37 combustion-operated distributed generation projects using fossil  
38 ~~fuels~~ *fuel* to meet an oxides of nitrogen (NO<sub>x</sub>) emissions rate  
39 standard of 0.14 pounds per megawatthour to be eligible for  
40 self-generation rebates.

(2) Commencing January 1, 2007, require all combustion-operated distributed generation projects using fossil ~~fuels~~ *fuel* to meet an oxides of nitrogen (NOx) emissions rate standard of 0.07 pounds per megawatthour and a minimum efficiency of 60 percent, to be eligible for self-generation rebates. A minimum efficiency of 60 percent shall be measured as useful energy output divided by fuel input. The efficiency determination shall be based on 100 percent load.

(3) Combined heat and power units that meet the ~~60-percent~~ *60-percent* efficiency standard may take a credit to meet the applicable oxides of ~~nitrogen~~ *nitrogen* (NOx) emission standard of 0.14 pounds per megawatthour or 0.07 pounds per megawatthour. Credit shall be at the rate of one megawatthour for each 3.4 million British Thermal Units (BTUs) of heat recovered.

(4) Provide the commission with flexibility in administering the self-generation incentive program, including, but not limited to, flexibility with regard to the amount of rebates, inclusion of other ~~ultra-clean~~ *ultra-clean* and ~~low-emission~~ *low-emission* distributed generation technologies, and evaluation of other public policy interests, including, but not limited to, ratepayers, and energy efficiency and environmental interests.

SEC. 315. Section 396 of the Public Utilities Code is amended to read:

396. (a) A consumer damaged by a violation of this article by ~~an electric~~ *an electric* service provider is entitled to recover all of the following:

(1) Actual damages.

(2) The consumer's reasonable attorney's fees and court costs.

(3) Exemplary damages, in the amount the court deems proper, for intentional or willful violations.

(4) Equitable relief as the court deems proper.

(b) The rights, remedies, and penalties established by this article are in addition to the rights, remedies, or penalties established under any other law.

(c) Nothing in this article shall abrogate any authority of the Attorney General to enforce existing law.

SEC. 316. Section 399.12 of the Public Utilities Code is amended to read:

399.12. For purposes of this article, the following terms have the following meanings:

1 (a) ~~(1)~~ “Eligible renewable energy resource” means an  
2 electric generating facility that is one of the following:

3 (1) The facility meets the definition of “in-state renewable  
4 electricity generation technology” in Section 383.5.

5 (2) A geothermal generation facility originally commencing  
6 operation prior to September 26, 1996, shall be eligible for  
7 purposes of adjusting a retail seller’s baseline quantity of eligible  
8 renewable energy resources except for output certified as  
9 incremental geothermal production by the Energy Commission,  
10 provided that the incremental output was not sold to an electrical  
11 corporation under contract entered into prior to September 26,  
12 1996. For each facility seeking certification, the Energy  
13 Commission shall determine historical production trends and  
14 establish criteria for measuring incremental geothermal  
15 production that recognizes the declining output of existing  
16 steamfields and the contribution of capital investments in the  
17 facility or wellfield.

18 (3) The output of a small hydroelectric generation facility of 30  
19 megawatts or less procured or owned by an electrical corporation  
20 as of the date of enactment of this article shall be eligible only for  
21 purposes of establishing the baseline of an electrical corporation  
22 pursuant to paragraph (3) of subdivision (a) of Section 399.15. A  
23 new hydroelectric facility is not an eligible renewable energy  
24 resource if it will require a new or increased appropriation or  
25 diversion of water under Part 2 (commencing with Section 1200)  
26 of Division 2 of the Water Code.

27 (4) A facility engaged in the combustion of municipal solid  
28 waste shall not be considered an eligible renewable resource unless  
29 it is located in Stanislaus County and was operational prior to  
30 September 26, 1996. Output from ~~such~~ *these* facilities shall be  
31 eligible only for the purpose of adjusting a retail seller’s baseline  
32 quantity of eligible renewable energy resources.

33 (b) “Retail seller” means an entity engaged in the retail sale of  
34 electricity to end-use customers, including any of the following:

35 (1) An electrical corporation, as defined in Section 218.

36 (2) A community choice aggregator. The commission shall  
37 institute a rulemaking to determine the manner in which a  
38 community choice aggregator will participate in the renewables  
39 portfolio standard subject to the same terms and conditions  
40 applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3, subject to the following conditions:

(A) An electric service provider shall be considered a retail seller under this article for sales to any customer acquiring service after January 1, 2003.

(B) An electric service provider shall be considered a retail seller under this article for sales to all its customers beginning on the earlier of January 1, 2006, or the date on which a contract between an electric service provider and a retail customer expires. Nothing ~~on~~ in this subdivision may require an electric service provider to disclose the terms of the contract to the commission.

(C) The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

(4) "Retail seller" does not include any of the following:

(A) A corporation or person employing cogeneration technology or producing power consistent with subdivision (b) of Section 218.

(B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(C) A local publicly owned electrical utility as defined in subdivision (d) of Section 9604.

(c) "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to Sections 399.13 and 399.15.

SEC. 317. Section 1701.3 of the Public Utilities Code is amended to read:

1701.3. (a) If the commission pursuant to Section 1701.1 has determined that a ratesetting case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned commissioner shall determine prior to the first hearing whether the commissioner or the assigned administrative law



1 judge shall be designated as the principal hearing officer. The  
2 principal hearing officer shall be present for more than one-half of  
3 the hearing days. The decision of the principal hearing officer shall  
4 be the proposed decision. An alternate decision may be issued by  
5 the assigned commissioner or the assigned administrative law  
6 judge who is not the principal hearing officer. The commission  
7 shall establish a procedure for any party to request the presence of  
8 a commissioner at a hearing. The assigned commissioner shall be  
9 present at the closing arguments of the case. The principal hearing  
10 officer shall present the proposed decision to the full commission  
11 in a public meeting. The alternate decision, if any, shall also be  
12 presented to the full commission at that public meeting. The  
13 alternate decision shall be filed with the commission and shall be  
14 served on all parties simultaneously with the proposed decision.

15 The presentation to the full commission shall contain a record  
16 of the number of days of the hearing, the number of days that each  
17 commissioner was present, and whether the decision was  
18 completed on time.

19 (b) The commission shall provide by regulation for peremptory  
20 challenges and challenges for cause of the administrative law  
21 judge. Challenges for cause shall include, but not be limited to,  
22 financial interests and prejudice. All parties shall be entitled to  
23 unlimited peremptory challenges in any case in which the  
24 administrative law judge has within the previous 12 months served  
25 in any capacity in an advocacy position at the commission, been  
26 employed by a regulated public utility, or has represented a party  
27 or has been a party of interest in the case.

28 (c) Ex parte communications are prohibited in ratesetting  
29 cases. However, oral ex parte communications may be permitted  
30 at any time by any commissioner if all interested parties are invited  
31 and given not less than three days' notice. Written ex parte  
32 communications may be permitted by any party provided that  
33 copies of the communication are transmitted to all parties on the  
34 same day. If an ex parte communication meeting is granted to any  
35 party, all other parties shall also be granted individual ex parte  
36 meetings of a substantially equal period of time and shall be sent  
37 a notice of that authorization at the time that the request is granted.  
38 In no event shall that notice be less than three days. The  
39 commission may establish a period during which no oral or written  
40 ex parte communications shall be permitted and may meet in



1 closed session during that period, which shall not in any  
2 circumstance exceed 14 days. If the commission holds the  
3 decision, it may permit ex parte communications during the first  
4 half of the interval between the hold date and the date that the  
5 decision is ~~calendered~~ *calendared* for final decision. The  
6 commission may meet in closed session for the second half of that  
7 interval.

8 (d) Any party has the right to present a final oral argument of  
9 its case before the commission. Those requests shall be scheduled  
10 in a timely manner. A quorum of the commission shall be present  
11 for the final oral arguments.

12 (e) The commission may, in issuing its decision, adopt, modify,  
13 or set aside the proposed decision or any part of the decision based  
14 on evidence in the record. The final decision of the commission  
15 shall be issued not later than 60 days after the issuance of the  
16 proposed decision. Under extraordinary circumstances the  
17 commission may extend this date for a reasonable period. The  
18 60-day period shall be extended for 30 days if any alternate  
19 decision is proposed pursuant to Section 311.

20 SEC. 318. Section 21670.1 of the Public Utilities Code is  
21 amended to read:

22 21670.1. (a) Notwithstanding any other provision of this  
23 article, if the board of supervisors and the city selection committee  
24 of mayors in the county each makes a determination by a majority  
25 vote that proper land use planning can be accomplished through  
26 the actions of an appropriately designated body, then the body so  
27 designated shall assume the planning responsibilities of an airport  
28 land use commission as provided for in this article, and a  
29 commission need not be formed in that county.

30 (b) A body designated pursuant to subdivision (a) ~~which~~ *that*  
31 does not include among its membership at least two members  
32 having ~~an~~ expertise in aviation, as defined in subdivision (e) of  
33 Section 21670, shall, when acting in the capacity of an airport land  
34 use commission, be augmented so that body, as augmented, will  
35 have at least two members having that expertise. The commission  
36 shall be constituted pursuant to this section on and after March 1,  
37 1988.

38 (c) (1) Notwithstanding subdivisions (a) and (b), and  
39 subdivision (b) of Section 21670, if the board of supervisors of a  
40 county and each affected city in that county each makes a

1 determination that proper land use planning pursuant to this article  
2 can be accomplished pursuant to this subdivision, then a  
3 commission need not be formed in that county.

4 (2) If the board of supervisors of a county and each affected city  
5 makes a determination that proper land use planning may be  
6 accomplished and a commission is not formed pursuant to  
7 paragraph (1), that county and the appropriate affected cities  
8 having jurisdiction over an airport, subject to the review and  
9 approval by the Division of Aeronautics of the department, shall  
10 do all of the following:

11 (A) Adopt processes for the preparation, adoption, and  
12 amendment of the airport land use compatibility plan for each  
13 airport that is served by a scheduled airline or operated for the  
14 benefit of the general public.

15 (B) Adopt processes for the notification of the general public,  
16 landowners, interested groups, and other public agencies  
17 regarding the preparation, adoption, and amendment of the airport  
18 land use compatibility plans.

19 (C) Adopt processes for the mediation of disputes arising from  
20 the preparation, adoption, and amendment of the airport land use  
21 compatibility plans.

22 (D) Adopt processes for the amendment of general and specific  
23 plans to be consistent with the airport land use compatibility plans.

24 (E) Designate the agency that shall be responsible ~~of~~ *for* the  
25 preparation, adoption, and amendment of each airport land use  
26 compatibility plan.

27 (3) The Division of Aeronautics of the department shall review  
28 the processes adopted pursuant to paragraph (2), and shall approve  
29 the processes if the division determines that the processes are  
30 consistent with the procedure required by this article and will do  
31 all of the following:

32 (A) Result in the preparation, adoption, and implementation of  
33 plans within a reasonable amount of time.

34 (B) Rely on the height, use, noise, safety, and density criteria  
35 that are compatible with airport operations, as established by this  
36 article, and referred to as the Airport Land Use Planning  
37 Handbook, published by the division, and any applicable federal  
38 aviation regulations, including, but not limited to, Part 77  
39 (commencing with Section 77.1) of Title 14 of the Code of Federal  
40 Regulations.

1 (C) Provide adequate opportunities for notice to, review of, and  
2 comment by the general public, landowners, interested groups,  
3 and other public agencies.

4 (4) If the county does not comply with the requirements of  
5 paragraph (2) within 120 days, then the airport land use  
6 compatibility plan and amendments shall not be considered  
7 adopted pursuant to this article and a commission shall be  
8 established within 90 days of the determination of noncompliance  
9 by the division and an airport land use compatibility plan shall be  
10 adopted pursuant to this article within 90 days of the establishment  
11 of the commission.

12 (d) A commission need not be formed in a county that has  
13 contracted for the preparation of airport land use compatibility  
14 plans with the Division of Aeronautics under the California Aid to  
15 Airports Program (~~Title 21~~ (*Chapter 4* (commencing with Section  
16 4050) of *Title 21* of the California Code of Regulations), Project  
17 Ker-VAR 90-1, and that submits all of the following information  
18 to the Division of Aeronautics for review and comment that the  
19 county and the cities affected by the airports within the county, as  
20 defined by the airport land use compatibility plans:

21 (1) Agree to adopt and implement the airport land use  
22 compatibility plans that have been developed under contract.

23 (2) Incorporated the height, use, noise, safety, and density  
24 criteria that are compatible with airport operations as established  
25 by this article, and referred to as the Airport Land Use Planning  
26 Handbook, published by the division, and any applicable federal  
27 aviation regulations, including, but not limited to, Part 77  
28 (commencing with Section 77.1) of Title 14 of the Code of Federal  
29 Regulations, as part of the general and specific plans for the county  
30 and for each affected city.

31 (3) If the county does not comply with this subdivision on or  
32 before May 1, 1995, then a commission shall be established in  
33 accordance with this article.

34 (e) (1) A commission need not be formed in a county if all of  
35 the following conditions are met:

36 (A) The county has only one public use airport that is owned by  
37 a city.

38 (B) (i) The county and the affected city adopt the elements in  
39 paragraph (2) of subdivision (d), as part of their general and  
40 specific plans for the county and the affected city.

1 (ii) The general and specific plans shall be submitted, upon  
2 adoption, to the Division of Aeronautics. If the county and the  
3 affected city do not submit the elements specified in paragraph (2)  
4 of subdivision (d), on or before May 1, 1996, then a commission  
5 shall be established in accordance with this article.

6 SEC. 319. Section 97.313 of the Revenue and Taxation Code  
7 is amended to read:

8 97.313. (a) Notwithstanding any other provision of this  
9 chapter, for the 1995–96 fiscal year only, the auditor of any  
10 qualified county shall, upon being ~~so~~ directed by the board of  
11 supervisors, increase the amount of property tax revenue allocated  
12 to that county by an amount of property tax revenue, not to exceed  
13 one million five hundred fifty thousand dollars (\$1,550,000), that  
14 is attributable to the difference between the following amounts:

15 (1) The amount of the reduction that would have been  
16 determined by the Director of Finance for the qualified county  
17 pursuant to subdivision (b) of Section 97.31 in the absence of the  
18 two million dollar (\$2,000,000) limitation of subdivision (a) and  
19 paragraph (4) of subdivision (b) of that section, and the maximum  
20 limitation of paragraph (5) of subdivision (b) of that same section.

21 (2) The amount of the reduction that was determined by the  
22 Director of Finance for the qualified county pursuant to  
23 subdivision (b) of Section 97.31.

24 If the board of supervisors directs the auditor, pursuant to this  
25 subdivision, to increase the amount of the property tax revenue  
26 allocation of the county, the board shall also direct the auditor to  
27 commensurately reduce the amount of the property tax revenue  
28 allocation to the Educational Revenue Augmentation Fund. The  
29 county shall expend any additional amount of property tax revenue  
30 that it receives pursuant to this subdivision solely for the purpose  
31 of funding public safety services.

32 (b) The Director of Finance shall determine for each qualified  
33 county the difference described in subdivision (a), and shall as  
34 soon *as* reasonably possible after the effective date of the act  
35 adding this section, notify the board of supervisors of each  
36 qualified county in writing of the amount of the difference  
37 calculated for that county.

38 (c) For purposes of this section, “qualified county” means an  
39 “eligible county,” as defined in paragraph (2) of subdivision (a)

1 of Section 97.31, that was subject to the reduction required by  
2 paragraph (4) of subdivision (b) of that same section.

3 (d) Except as otherwise required by law, the county auditor of  
4 a qualified county shall allocate property tax revenues for the  
5 1996–97 fiscal year and each fiscal year thereafter in those  
6 amounts that fully reflect, as otherwise required by this chapter,  
7 any increases or reductions in allocations that are directed by the  
8 board of supervisors pursuant to subdivision (a).

9 SEC. 320. Section 155.20 of the Revenue and Taxation Code  
10 is amended to read:

11 155.20. (a) ~~Subject to the limitations listed in subsections~~  
12 ~~subdivisions~~ (b), (c), (d), and (e), a county board of supervisors  
13 may exempt from property tax all real property with a base year  
14 value (as determined pursuant to Chapter 1 (commencing with  
15 Section 50) of Part 0.5), and personal property with a full value so  
16 low that, if not exempt, the total taxes, special assessments, and  
17 applicable subventions on the property would amount to less than  
18 the cost of assessing and collecting them.

19 (b) (1) The board of supervisors shall have no authority to  
20 exempt property with a total base year value or full value of more  
21 than five thousand dollars (\$5,000), except that this limitation is  
22 increased to fifty thousand dollars (\$50,000) in the case of a  
23 possessory interest, for a temporary and transitory use, in a  
24 publicly owned fairground, fairground facility, convention  
25 facility, or cultural facility. For purposes of this paragraph,  
26 “publicly owned convention or cultural facility” means a publicly  
27 owned convention center, civic auditorium, theater, assembly hall,  
28 museum, or other civic building that is used primarily for staging  
29 any of the following:

30 (A) Conventions, trade and consumer shows, or civic and  
31 community events.

32 (B) Live theater, dance, or musical productions.

33 (C) Artistic, historic, technological, or educational exhibits.

34 (2) In determining the level of the exemption, the board of  
35 supervisors shall determine at what level of exemption the costs of  
36 assessing the property and collecting taxes, assessments, and  
37 subventions on the property exceeds the proceeds to be collected.  
38 The board of supervisors shall establish the exemption level  
39 uniformly for different classes of property. In making this  
40 determination, the board of supervisors may consider the total

1 taxes, special assessments, and applicable subventions for the year  
2 of assessment only or for the year of assessment and succeeding  
3 years where cumulative revenues will not exceed the cost of  
4 assessments and collections.

5 (c) This section does not apply to those real or personal  
6 properties enumerated in Section 52.

7 (d) The exemption authorized by this section shall be adopted  
8 by the board of supervisors on or before the lien date for the fiscal  
9 year to which the exemption is to apply and may, at the option of  
10 the board of supervisors, continue in effect for succeeding fiscal  
11 years. Any revision or rescission of the exemption shall be adopted  
12 by the board of supervisors on or before the lien date for the fiscal  
13 year to which that revision or rescission is to apply.

14 (e) Nothing in this section shall authorize either of the  
15 following:

16 (1) A county board of supervisors to exempt new construction,  
17 unless the new total base year value of the property, including this  
18 new construction, is five thousand dollars (\$5,000) or less.

19 (2) An assessor to exempt or not to enroll any property of any  
20 value, unless specifically authorized by a county board of  
21 supervisors, pursuant to this section.

22 SEC. 321. Section 3691.6 of the Revenue and Taxation Code  
23 is amended to read:

24 3691.6. Upon request of the Controller, the tax collector shall  
25 report the disposition of all tax-defaulted parcels subject to tax  
26 collections power to ~~sale~~ *sell* in his or her county.

27 SEC. 322. Section 6077 of the Revenue and Taxation Code is  
28 amended to read:

29 6077. (a) Any retail florist who fails to obtain a permit before  
30 engaging in or conducting business as a seller shall, in addition to  
31 any other applicable penalty, pay a penalty of five hundred dollars  
32 (\$500).

33 (b) Every mobile retail florist shall have a copy of the permit  
34 at each sales location which shall be in the possession of a person  
35 operating at that location.

36 (c) For purposes of this section, *the following terms have the*  
37 *following meanings:*

38 (1) "Retail florist" means any person selling any flowers,  
39 potted ~~hermamental~~ *ornamental* plants, floral arrangements, floral  
40 bouquets, wreaths, or any similar products at retail. "Retail

1 florist” does not include any flower or ornamental plant grower  
2 who sells his or her own products.

3 (2) “Mobile retail florist” means any retail florist who does not  
4 sell from a structure or retail shop, including, but not limited to,  
5 a florist who sells from a vehicle, pushcart, wagon, or other  
6 portable method, or who sells at a swap meet, flea market, or  
7 similar transient location.

8 SEC. 323. Section 6361.1 of the Revenue and Taxation Code  
9 is amended to read:

10 6361.1. (a) Any qualified organization is a consumer of, and  
11 shall not be considered a retailer of, tangible personal property if  
12 all of the following conditions are met:

13 (1) The tangible personal property is of a handcrafted or artistic  
14 nature and is designed, created, or made by either individuals with  
15 developmental disabilities or children with severe emotional  
16 disturbances who are members of, or receive services from, the  
17 qualified organization.

18 (2) The price of each item of tangible personal property sold  
19 does not exceed twenty dollars (\$20).

20 (3) The qualified ~~organizations’s~~ organization’s sales are made  
21 on an irregular or intermittent basis.

22 (4) The qualified ~~organizations’s~~ organization’s profits from  
23 the sales are used exclusively in furtherance of the purposes of the  
24 organization.

25 (b) For purposes of this section, “qualified organization”  
26 means any organization that meets all of the following conditions:

27 (1) The organization is exempt from taxation pursuant to  
28 ~~Section 501(e)(3) of the Internal Revenue~~ paragraph (3) of  
29 subsection (c) of Section 501 of Title 26 of the United States Code.

30 (2) The primary purpose of the organization is to provide  
31 services to either individuals with developmental disabilities or  
32 children with severe emotional disturbances.

33 (3) The organization does not discriminate on the basis of race,  
34 sex, nationality, or religion.

35 SEC. 324. Section 9405 of the Revenue and Taxation Code is  
36 amended to read:

37 9405. This chapter shall be administered in conjunction with  
38 the IFTA Articles of Agreement, the Use Fuel Tax Law (Part 3  
39 (commencing with Section 8601)), and the Diesel Fuel Tax Law  
40 (Part 31 (commencing with Section 60001)). Whenever the Use



Fuel Tax Law or the Diesel Fuel Tax Law is inconsistent with the IFTA Articles of Agreement or this chapter, the IFTA Articles of Agreement or this chapter shall prevail except where prohibited by the California *Constitution* or United States Constitution.

SEC. 325. Section 17132.6 of the Revenue and Taxation Code is amended to read:

17132.6. A payment under ~~Section 103(c)(10)~~ *paragraph (10) of subsection (c) of Section 103* of the Ricky Ray Hemophilia Relief Fund Act of 1998 (~~Public Law 105-369~~) (*42 U.S.C. Sec. 300c-22*) to an individual shall be treated for purposes of this part, Part 10.2 (commencing with Section 18401), and Part 11 (commencing with Section 23001) as damages described in Section 104(a)(2) of the Internal Revenue Code.

SEC. 326. Section 18407 of the Revenue and Taxation Code, as added by Chapter 654 of the Statutes of 2003, is amended to read:

18407. Section 6011 of the Internal Revenue Code, relating to general requirement of return, statement, or list, shall apply, except as otherwise provided.

(a) Section 6011(a) of the Internal Revenue Code, relating to general rule, is modified as follows:

(1) The phrase “any person liable for any tax imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part,” shall be substituted for the phrase “when required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title,” contained therein.

(2) “Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board” shall be substituted for “Secretary.”

(3) To additionally provide that “reportable transaction” includes any transaction of a type that the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or the Franchise Tax Board under this section for California income or franchise tax purposes determines as having a potential for tax avoidance or evasion including deductions, basis, credits, entity classification, dividend elimination, or omission of income, and shall be reported on the return or the statement required to be made.

(4) To additionally provide that “listed transaction” includes any transaction that is the same as, or substantially similar to, a transaction specifically identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board under this section for California income or franchise tax purposes, as a tax avoidance transaction including deductions, basis, credits, entity classification, dividend elimination, or omission of income and shall be reported on the return or statement required to be made.

(A) The Franchise Tax Board shall identify and publish “listed transactions” (whether identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board) through the use of Franchise Tax Board Notices or other published positions. In addition, the “listed transactions” identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board.

(B) The Franchise Tax Board shall conduct a public outreach program to make taxpayers aware of the new and increased penalties associated with the use of tax avoidance transactions including deductions, basis, credits, entity classification, dividend elimination, or omission of income.

(5) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to paragraph (4).

(b) Section 6011(b) of the Internal Revenue Code, relating to identification of taxpayer, does not apply and, in lieu thereof, Section 18408 shall apply.

(c) Section 6011(c) of the Internal Revenue Code, relating to returns, etc., of ~~DISCS~~ *DISCs* and former ~~DISCS~~ *DISCs* and ~~FSC's~~ *FSCs* and former ~~FSC's~~ *FSCs*, does not apply.

(d) Section 6011(d) of the Internal Revenue Code, relating to authority to require information concerning Section 912 allowances, does not apply.

(e) Section 6011(e) of the Internal Revenue Code, relating to regulations requiring returns on magnetic media, etc., shall take into account Section 18408 and shall also include the

1 modifications made to Section 6011(e) of the Internal Revenue  
2 Code by Section 18408.

3 (f) Section 6011(f)(2) of the Internal Revenue Code, relating to  
4 incentives, does not apply.

5 SEC. 327. Section 18407 of the Revenue and Taxation Code,  
6 as added by Chapter 656 of the Statutes of 2003, is amended to  
7 read:

8 18407. Section 6011 of the Internal Revenue Code, relating to  
9 general requirement of return, statement, or list, shall apply, except  
10 as otherwise provided.

11 (a) Section 6011(a) of the Internal Revenue Code, relating to  
12 general rule, is modified as follows:

13 (1) The phrase “any person liable for any tax imposed by Part  
14 10 (commencing with Section 17001), Part 11 (commencing with  
15 Section 23001), or this part,” shall be substituted for the phrase  
16 “when required by regulations prescribed by the Secretary any  
17 person made liable for any tax imposed by this title,” contained  
18 therein.

19 (2) “Secretary of the Treasury under Section 6011 of the  
20 Internal Revenue Code for federal income tax purposes or by the  
21 Franchise Tax Board” shall be substituted for “Secretary.”

22 (3) To additionally provide that “reportable transaction”  
23 includes any transaction of a type that the Secretary of the Treasury  
24 under Section 6011 of the Internal Revenue Code for federal  
25 income tax purposes or the Franchise Tax Board under this section  
26 for California income or franchise tax purposes determines as  
27 having a potential for tax avoidance or evasion including  
28 deductions, basis, credits, entity classification, dividend  
29 elimination, or omission of income, and shall be reported on the  
30 return or the statement required to be made.

31 (4) To additionally provide that “listed transaction” includes  
32 any transaction that is the same as, or substantially similar to, a  
33 transaction specifically identified by the Secretary of the Treasury  
34 under Section 6011 of the Internal Revenue Code for federal  
35 income tax purposes or by the Franchise Tax Board under this  
36 section for California income or franchise tax purposes, as a tax  
37 avoidance transaction including deductions, basis, credits, entity  
38 classification, dividend elimination, or omission of income and  
39 shall be reported on the return or statement required to be made.

(A) The Franchise Tax Board shall identify and publish “listed transactions” (whether identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board) through the use of Franchise Tax Board Notices or other published positions. In addition, the “listed transactions” identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board.

(B) The Franchise Tax Board shall conduct a public outreach program to make taxpayers aware of the new and increased penalties associated with the use of tax avoidance transactions including deductions, basis, credits, entity classification, dividend elimination, or omission of income.

(5) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to paragraph (4).

(b) Section 6011(b) of the Internal Revenue Code, relating to identification of taxpayer, does not apply and, in lieu thereof, Section 18408 shall apply.

(c) Section 6011(c) of the Internal Revenue Code, relating to returns, etc., of ~~DISCS~~ *DISCs* and former ~~DISCS~~ *DISCs* and ~~FSC's~~ *FSCs* and former ~~FSC's~~ *FSCs*, does not apply.

(d) Section 6011(d) of the Internal Revenue Code, relating to authority to require information concerning Section 912 allowances, does not apply.

(e) Section 6011(e) of the Internal Revenue Code, relating to regulations requiring returns on magnetic media, etc., shall take into account Section 18408 and shall also include the modifications made to Section 6011(e) of the Internal Revenue Code by Section 18408.

(f) Section 6011(f)(2) of the Internal Revenue Code, relating to incentives, does not apply.

SEC. 328. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with Section 6662 of the Internal Revenue Code, relating to *the* imposition of *an* accuracy-related penalty, except as otherwise provided.

(2) With respect to corporations, this subdivision shall apply to all of the following:

(A) All taxable years beginning on or after January 1, 1990.

(B) Any other taxable year for which an assessment is made after July 16, 1991.

(C) For purposes of this section, references in Section 6662(e) of the Internal Revenue Code and the regulations thereunder, relating to *the* treatment of an affiliated group that files a consolidated federal return, are modified to apply to those entities required to be included in a combined report under Section 25101 or 25110. For these purposes, entities included in a combined report pursuant to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be considered only to the extent required to be included in the combined report.

(3) Section 6662(d)(1)(B) of the Internal Revenue Code is modified to provide that in the case of a corporation, other than an S corporation, that has been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of:

(A) Ten percent of the tax required to be shown on the return for the taxable year (or, if greater, two thousand five hundred dollars (\$2,500)), or

(B) Five million dollars (\$5,000,000).

(4) Section 6662(d)(2)(A) of the Internal Revenue Code is modified to additionally provide that the excess determined under Section 6662(d)(2)(A) of the Internal Revenue Code shall be determined without regard to items to which Section 19773 applies and without regard to items with respect to which a penalty is imposed by Section 19774.

(5) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 6662(d)(2)(B)(i) of the Internal Revenue Code is modified to substitute the phrase “the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment” for the phrase “the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment” contained therein.

1 (b) For purposes of Section 6662(d) of the Internal Revenue  
2 Code, Section 6664 of the Internal Revenue Code (as modified by  
3 subdivision (d)), Section 6694(a)(1) of the Internal Revenue Code,  
4 and this part, the Franchise Tax Board may prescribe a list of  
5 positions for which the Franchise Tax Board believes there is not  
6 substantial authority or there is no reasonable belief that the tax  
7 treatment is more likely than not the proper tax treatment. That list  
8 (and any revisions thereof) shall be published through the use of  
9 Franchise Tax Board Notices or other published positions. In  
10 addition, the “listed transactions” identified and published  
11 pursuant to the preceding sentence shall be published on the Web  
12 site of the Franchise Tax Board. This subdivision applies only to  
13 list of positions relating to abusive tax shelters, within the meaning  
14 of Section 19777.

15 (c) A fraud penalty shall be imposed under this part and shall  
16 be determined in accordance with Section 6663 of the Internal  
17 Revenue Code, relating to imposition of fraud penalty, except as  
18 otherwise provided.

19 (d) Section 6664 of the Internal Revenue Code, relating to  
20 definitions and special rules, shall apply, except as otherwise  
21 provided.

22 (1) For taxpayers that have been contacted by the Franchise Tax  
23 Board regarding the use of a potentially abusive tax shelter (within  
24 the meaning of Section 19777), Section 6664 of the Internal  
25 Revenue Code is modified to additionally provide that no penalty  
26 shall be imposed under Section 19773 with respect to any portion  
27 of a reportable transaction understatement if it is shown that there  
28 was a reasonable cause for that portion and that the taxpayer acted  
29 in good faith with respect to that portion.

30 (2) Paragraph (1) does not apply to any reportable transaction  
31 understatement unless all of the following requirements are met:

32 (A) (i) The relevant facts affecting the tax treatment of the  
33 item are adequately disclosed in accordance with the regulations  
34 prescribed under Section 6011 of the Internal Revenue Code, as  
35 modified by Section 18407.

36 (ii) A taxpayer failing to adequately disclose in accordance  
37 with Section 6011 of the Internal Revenue Code, as modified by  
38 Section 18407, shall be treated as meeting the requirements of this  
39 subparagraph, if the penalty for that failure was rescinded under  
40 subdivision (e) of Section 19772.



1 (iii) For taxable years beginning on or before January 1, 2003,  
2 “adequately disclosed” includes the disclosure of the tax shelter  
3 identification number on the taxpayer’s return, as required by  
4 subdivision (c) of Section 18628.

5 (B) There is or was substantial authority for ~~that~~ *the* treatment.

6 (C) The taxpayer reasonably believed that ~~that~~ *the* treatment  
7 was more likely than not the proper treatment.

8 (3) For purposes of subparagraph (C) of paragraph (2) all of the  
9 following shall apply:

10 (A) A taxpayer shall be treated as having a reasonable belief  
11 with respect to the tax treatment of an item only if that belief meets  
12 both of the following requirements:

13 (i) Is based on the facts and law that exist at the time the return  
14 of tax that includes that tax treatment is filed.

15 (ii) Relates solely to the taxpayer’s chances of success on the  
16 merits of that treatment and does not take into account the  
17 possibility that the return will not be audited, that the treatment  
18 will not be raised on audit, or that the treatment will be resolved  
19 through settlement if it is raised.

20 (B) (i) An opinion of a tax advisor may not be relied upon to  
21 establish the reasonable belief of a taxpayer if either of the  
22 following conditions are met:

23 (I) The tax advisor is described in clause (ii).

24 (II) The opinion is described in clause (iii).

25 (ii) A tax advisor is described in this clause if the tax advisor  
26 meets any of the following conditions:

27 (I) Is a material advisor (within the meaning of subdivision (d)  
28 of Section 18648) who participates in the organization,  
29 management, promotion, or sale of the transaction or who is  
30 related (within the meaning of Sections 267(b) or 707(b)(1) of the  
31 Internal Revenue Code) to any person who so participates.

32 (II) Is compensated directly or indirectly by a material advisor  
33 with respect to the transaction.

34 (III) Has a fee arrangement with respect to the transaction that  
35 is contingent on all or part of the intended tax benefits from the  
36 transaction being sustained.

37 (IV) As determined under regulations prescribed by either the  
38 Secretary of the Treasury for federal income tax purposes or the  
39 Franchise Tax Board, has a continuing financial interest with  
40 respect to the transaction.



(iii) For purposes of clause (i), an opinion is disqualified if the opinion meets any of the following conditions:

(I) Is based on unreasonable, factual, or legal assumptions (including assumptions as to future events).

(II) Unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person.

(III) Does not identify and consider all relevant facts.

(IV) Fails to meet any other requirement as either the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board may by forms and instructions prescribe.

(e) Section 6665 of the Internal Revenue Code, relating to applicable rules, shall apply, except as otherwise provided.

(f) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 461(i)(3)(C) of the Internal Revenue Code is modified by substituting a reference to “Section 1274(b)(3)(B) of the Internal Revenue Code, as modified by subdivision (g) of Section 19164” instead of the reference to “Section 6662(d)(2)(C)(iii)” contained therein.

(g) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), Section 1274(b)(3)(B)(i) of the Internal Revenue Code is modified to provide that for purposes of Section 1274(b)(3)(B) of the Internal Revenue Code, the term “tax shelter” means (1) a partnership or other entity, (2) any investment plan or arrangement, or (3) any other plan or arrangement, if a significant purpose of the partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax or the tax imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 329. Section 19179 of the Revenue and Taxation Code is amended to read:

19179. A penalty shall be imposed for filing a frivolous return. The penalty shall be determined in accordance with Section 6702 of the Internal Revenue Code, except as otherwise provided.

(a) Section 6702 of the Internal Revenue Code shall be applied to returns required to be filed under this part.

(b) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within

1 the meaning of Section 19777), Section 6702(a) of the Internal  
2 Revenue Code is modified as follows:

3 (1) By substituting “\$5,000” instead of “\$500.”

4 (2) By substituting the ~~phrase term~~ “person” instead of the  
5 ~~phrase term~~ “individual” in each place that it appears.

6 (3) By substituting “tax imposed under Part 10 (commencing  
7 with Section 17001), Part 11 (commencing with Section 23001),  
8 or this part” instead of the phrase “tax imposed by subtitle A”  
9 contained therein.

10 (4) By substituting the phrase “is based on” instead of the  
11 phrase “is due to” contained therein.

12 (5) By substituting the phrase “frivolous or is based on a  
13 position that the Franchise Tax Board has identified as frivolous  
14 under subdivision (c) of Section 19179” instead of the ~~phrase term~~  
15 “frivolous” contained therein.

16 (6) By substituting the phrase “reflects a desire to delay or  
17 impede the administration of federal income tax laws as  
18 determined by the Secretary of the Treasury or the administration  
19 of the tax imposed under Part 10 (commencing with Section  
20 17001), Part 11 (commencing with Section 23001), or this part as  
21 determined by the Franchise Tax Board” instead of the phrase “a  
22 desire (which appears on the purported return) to delay or impede  
23 the administration of Federal income tax laws” contained therein.

24 (c) (1) The Franchise Tax Board shall prescribe (and  
25 periodically revise) a list of positions which the Secretary of the  
26 Treasury for federal income tax purposes or the Franchise Tax  
27 Board has identified as being frivolous for purposes of this section.

28 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
29 Division 3 of Title 2 of the Government Code does not apply to any  
30 standard, criterion, procedure, determination, rule, notice, or  
31 guideline established or prescribed by the Franchise Tax Board  
32 pursuant to paragraph (1).

33 (d) (1) Except as provided in paragraph (3), any person who  
34 submits a specified frivolous submission shall pay a penalty of five  
35 thousand dollars (\$5,000).

36 (2) For purposes of this section, all of the following shall apply:

37 (A) The ~~term phrase~~ “specified frivolous submission” means  
38 a specified submission if any portion of that submission meets any  
39 of the following conditions:

1 (i) Is based on a position which the Franchise Tax Board has  
2 identified as frivolous under subdivision (c).

3 (ii) Reflects a desire to delay or impede the administration of  
4 federal income tax laws as determined by the Secretary of the  
5 Treasury or the administration of the tax imposed under Part 10  
6 (commencing with Section 17001), Part 11 (commencing with  
7 Section 23001), or this part as determined by the Franchise Tax  
8 Board.

9 (B) The ~~term~~ phrase “specified submission” means any of the  
10 following:

11 (i) A protest under Section 19041.

12 (ii) A request for a hearing under Section 19044.

13 (iii) An application under any of the following sections:

14 (I) Section 19008 (relating to agreements for payment of tax  
15 liability in installments).

16 (II) Section 19443 (relating to compromises).

17 (III) Section 21004 (relating to actions of the Taxpayer Right’s  
18 Advocate).

19 (3) If the Franchise Tax Board provides a person with notice  
20 that a submission is a specified frivolous submission and the  
21 person withdraws that submission within 30 days after the notice,  
22 the penalty imposed under paragraph (1) does not apply with  
23 respect to that submission.

24 (e) (1) The Chief Counsel of the Franchise Tax Board may  
25 rescind all or any portion of any penalty imposed by this section  
26 if both of the following apply:

27 (A) Imposing the penalty would be against equity and good  
28 conscience.

29 (B) Rescinding the penalty would promote compliance with  
30 the requirements of this part and Part 10 (commencing with  
31 Section 17001) or Part 11 (commencing with Section 23001) and  
32 effective tax administration.

33 (2) The exercise of authority under paragraph (1) shall be at the  
34 sole discretion of the Chief Counsel of the Franchise Tax Board  
35 and may not be delegated.

36 (3) Notwithstanding any other law or rule of law, any  
37 determination under this subdivision may not be reviewed in any  
38 administrative or judicial proceeding.

39 (f) The penalties imposed by this section shall be in addition to  
40 any other penalty provided by law.

SEC. 330. Section 19777 of the Revenue and Taxation Code, as added by Chapter 654 of the Statutes of 2003, is amended to read:

19777. (a) If a taxpayer has been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter, and has a deficiency, there shall be added to the tax an amount equal to 100 percent of the interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the date the notice of proposed assessment is mailed.

(b) “Potentially abusive tax shelter” means:

(1) Any tax shelter (as defined in Section 6111 of the Internal Revenue Code) with respect to which registration is required under Section 6111 of the Internal Revenue Code.

(2) Any entity, investment plan or arrangement, or other plan or arrangement which is of a type that the Secretary of the Treasury or the Franchise Tax Board determines by regulations as having a potential for tax avoidance or evasion.

(c) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section ~~23000~~ 23001), or this part.

(d) This section shall apply to notices of proposed assessments mailed after the effective date of the act adding this section.

SEC. 331. Section 19777 of the Revenue and Taxation Code, as added by Chapter 656 of the Statutes of 2003, is amended to read:

19777. (a) If a taxpayer has been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter, and has a deficiency, there shall be added to the tax an amount equal to 100 percent of the interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the date the notice of proposed assessment is mailed.

(b) “Potentially abusive tax shelter” means:

(1) Any tax shelter (as defined in Section 6111 of the Internal Revenue Code) with respect to which registration is required under Section 6111 of the Internal Revenue Code.

(2) Any entity, investment plan or arrangement, or other plan or arrangement which is of a type that the Secretary of the Treasury

1 or the Franchise Tax Board determines by regulations as having a  
2 potential for tax avoidance or evasion.

3 (c) The penalty imposed by this section is in addition to any  
4 other penalty imposed under Part 10 (commencing with Section  
5 17001), Part 11 (commencing with Section ~~23000~~ 23001), or this  
6 part.

7 (d) This section shall apply to notices of proposed assessments  
8 mailed after the effective date of the act adding this section.

9 SEC. 332. Section 23036 of the Revenue and Taxation Code  
10 is amended to read:

11 23036. (a) (1) The term “tax” includes any of the following:

12 (A) The tax imposed under Chapter 2 (commencing with  
13 Section 23101).

14 (B) The tax imposed under Chapter 3 (commencing with  
15 Section 23501).

16 (C) The tax on unrelated business taxable income, imposed  
17 under Section 23731.

18 (D) The tax on S corporations imposed under Section 23802.

19 (2) The term “tax” does not include any amount imposed  
20 under paragraph (1) of subdivision (e) of Section 24667 or  
21 paragraph (2) of subdivision (f) of Section 24667.

22 (b) For purposes of Article 5 (commencing with Section  
23 18661) of Chapter 2, Article 3 (commencing with Section 19031)  
24 of Chapter 4, Article 6 (commencing with Section 19101) of  
25 Chapter 4, and Chapter 7 (commencing with Section 19501) of  
26 Part 10.2, and for purposes of Sections 18601, 19001, and 19005,  
27 the term “tax” also includes all of the following:

28 (1) The tax on limited partnerships, imposed under Section  
29 17935, the tax on limited liability companies, imposed under  
30 Section 17941, and the tax on registered limited liability  
31 partnerships and foreign limited liability partnerships imposed  
32 under Section 17948.

33 (2) The alternative minimum tax imposed under Chapter 2.5  
34 (commencing with Section 23400).

35 (3) The tax on built-in gains of S corporations, imposed under  
36 Section 23809.

37 (4) The tax on excess passive investment income of S  
38 corporations, imposed under Section 23811.

39 (c) Notwithstanding any other provision of this part, credits ~~is~~  
40 *are* allowed against the “tax” in the following order:

1 (1) Credits that do not contain carryover provisions.

2 (2) Credits that, when the credit exceeds the “tax,” allow the  
3 excess to be carried over to offset the “tax” in succeeding taxable  
4 years, except for those credits that are allowed to reduce the “tax”  
5 below the tentative minimum tax, as defined by Section 23455.  
6 The order of credits within this paragraph shall be determined by  
7 the Franchise Tax Board.

8 (3) The minimum tax credit allowed by Section 23453.

9 (4) Credits that are allowed to reduce the “tax” below the  
10 tentative minimum tax, as defined by Section 23455.

11 (5) Credits for taxes withheld under Section 18662.

12 (d) Notwithstanding any other provision of this part, each of  
13 the following applies:

14 (1) No credit may reduce the “tax” below the tentative  
15 minimum tax (as defined by paragraph (1) of subdivision (a) of  
16 Section 23455), except the following credits:

17 (A) The credit allowed by former Section 23601 (relating to  
18 solar energy).

19 (B) The credit allowed by former Section 23601.4 (relating to  
20 solar energy).

21 (C) The credit allowed by former Section 23601.5 (relating to  
22 solar energy).

23 (D) The credit allowed by Section 23609 (relating to research  
24 expenditures).

25 (E) The credit allowed by former Section 23609.5 (relating to  
26 clinical testing expenses).

27 (F) The credit allowed by Section 23610.5 (relating to  
28 low-income housing).

29 (G) The credit allowed by former Section 23612 (relating to  
30 sales and use tax credit).

31 (H) The credit allowed by Section 23612.2 (relating to  
32 enterprise zone sales or use tax credit).

33 (I) The credit allowed by former Section 23612.6 (relating to  
34 Los Angeles Revitalization Zone sales tax credit).

35 (J) The credit allowed by former Section 23622 (relating to  
36 enterprise zone hiring credit).

37 (K) The credit allowed by Section 23622.7 (relating to  
38 enterprise zone hiring credit).

39 (L) The credit allowed by former Section 23623 (relating to  
40 program area hiring credit).

1 (M) The credit allowed by former Section 23623.5 (relating to  
2 Los Angeles Revitalization Zone hiring credit).

3 (N) The credit allowed by former Section 23625 (relating to  
4 Los Angeles Revitalization Zone hiring credit).

5 (O) The credit allowed by Section 23633 (relating to targeted  
6 tax area sales or use tax credit).

7 (P) The credit allowed by Section 23634 (relating to targeted  
8 tax area hiring credit).

9 (Q) The credit allowed by Section 23649 (relating to qualified  
10 property).

11 (2) No credit against the tax may reduce the minimum  
12 franchise tax imposed under Chapter 2 (commencing with Section  
13 23101).

14 (e) Any credit which is partially or totally denied under  
15 subdivision (d) is allowed to be carried over to reduce the “tax”  
16 in the following year, and succeeding years if necessary, if the  
17 provisions relating to that credit include a provision to allow a  
18 carryover of the unused portion of that credit.

19 (f) Unless otherwise provided, any remaining carryover from  
20 a credit that has been repealed or made inoperative is allowed to  
21 be carried over under the provisions of that section as it read  
22 immediately prior to being repealed or becoming inoperative.

23 (g) Unless otherwise provided, if two or more taxpayers share  
24 in costs that would be eligible for a tax credit allowed under this  
25 part, each taxpayer is eligible to receive the tax credit in proportion  
26 to ~~its~~ *his or her* respective share of the costs paid or incurred.

27 (h) Unless otherwise provided, in the case of an S corporation,  
28 any credit allowed by this part is computed at the S corporation  
29 level, and any limitation on the expenses qualifying for the credit  
30 or limitation upon the amount of the credit applies to the S  
31 corporation and to each shareholder.

32 (i) (1) With respect to any taxpayer that directly or indirectly  
33 owns an interest in a business entity that is disregarded for tax  
34 purposes pursuant to Section 23038 and any regulations  
35 thereunder, the amount of any credit or credit carryforward  
36 allowable for any taxable year attributable to the disregarded  
37 business entity is limited in accordance with paragraphs (2) and  
38 (3).

39 (2) The amount of any credit otherwise allowed under this part,  
40 including any credit carryover from prior years, that may be



1 applied to reduce the taxpayer's "tax," as defined in subdivision  
2 (a), for the taxable year is limited to an amount equal to the excess  
3 of the taxpayer's regular tax (as defined in Section 23455),  
4 determined by including income attributable to the disregarded  
5 business entity that generated the credit or credit carryover, over  
6 the taxpayer's regular tax (as defined in Section 23455),  
7 determined by excluding the income attributable to that  
8 disregarded business entity. No credit is allowed if the taxpayer's  
9 regular tax (as defined in Section 23455), determined by including  
10 the income attributable to the disregarded business entity is less  
11 than the taxpayer's regular tax (as defined in Section 23455),  
12 determined by excluding the income attributable to the  
13 disregarded business entity.

14 (3) If the amount of a credit allowed pursuant to the section  
15 establishing the credit exceeds the amount allowable under this  
16 subdivision in any taxable year, the excess amount may be carried  
17 over to subsequent taxable years pursuant to subdivisions (d), (e),  
18 and (f).

19 (j) (1) Unless otherwise specifically provided, in the case of a  
20 taxpayer that is a partner or shareholder of an eligible pass-through  
21 entity described in paragraph (2), any credit passed through to the  
22 taxpayer in the taxpayer's first taxable year beginning on or after  
23 the date the credit is no longer operative may be claimed by the  
24 taxpayer in that taxable year, notwithstanding the repeal of the  
25 statute authorizing the credit prior to the close of that taxable year.

26 (2) For purposes of this subdivision, "eligible pass-through  
27 entity" means any partnership or S corporation that files its return  
28 on a fiscal year basis pursuant to Section 18566, and that is entitled  
29 to a credit pursuant to this part for the taxable year that begins  
30 during the last year a credit is operative.

31 (3) This subdivision applies to credits that become inoperative  
32 on or after the operative date of the act adding this subdivision.

33 SEC. 333. Section 23736.1 of the Revenue and Taxation Code  
34 is amended to read:

35 23736.1. (a) For the purposes of this article, the term  
36 "prohibited transaction" means any transaction in which an  
37 organization subject to ~~the provisions of this article—~~

38 (1) Lends any part of its income or corpus, without the receipt  
39 of adequate security and a reasonable rate of interest, to;

1 (2) Pays any compensation, in excess of a reasonable  
2 allowance for salaries or other compensation for personal services  
3 actually rendered, to;

4 (3) Makes any part of its services available on a preferential  
5 basis to;

6 (4) Makes any substantial purchase of securities or any other  
7 property, for more than adequate consideration in money or  
8 money's worth, from;

9 (5) Sells any substantial part of its ~~securities~~ securities or other  
10 property, for less than an adequate consideration in money or  
11 money's worth, to; or

12 (6) Engages in any other transaction ~~which~~ that results in a  
13 substantial diversion of its income or corpus to; the creator of the  
14 organization (if a trust); a person who has made a substantial  
15 contribution to the organization; a member of the family (as  
16 defined in Section 267(c)(4) of the Internal Revenue Code) of an  
17 individual who is the creator of that trust or who has made a  
18 substantial contribution to that organization; or a corporation  
19 controlled by that creator or person through the ownership,  
20 directly or indirectly, of 50 percent or more of the total combined  
21 voting power of all classes of stock entitled to vote or 50 percent  
22 or more of the total value of shares of all classes of stock of the  
23 corporation.

24 (b) For purposes of subdivision (a), a bond, debenture, note, or  
25 certificate or other evidence of indebtedness (hereinafter in this  
26 section referred to as "obligation") acquired by a trust described  
27 in Section 23701n shall not be treated as a loan made without the  
28 receipt of adequate security if—

29 (1) ~~Such~~ The obligation is acquired—

30 (A) On the market, either (i) at the price of the obligation  
31 prevailing on a national securities exchange ~~which~~ that is  
32 registered with the Securities and Exchange Commission, or (ii)  
33 if the obligation is not traded on ~~such~~ a national securities  
34 exchange, at a price not less favorable to the trust than the offering  
35 price for the obligation as established by current bid and asked  
36 prices quoted by persons independent of the issuer;

37 (B) From an underwriter, at a price (i) not in excess of the  
38 public offering price for the obligation as set forth in a prospectus  
39 or offering circular filed with the Securities and Exchange

Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) Directly from the issuer, at a price not less favorable to the trust than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) Immediately following acquisition of that obligation—

(A) Not more than 25 percent of the aggregate amount of obligations issued in that issue and outstanding at the time of acquisition is held by the trust, and

(B) At least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) Immediately following acquisition of the obligation, not more than 25 percent of the assets of the trust is invested in obligations of persons described in subdivision (a).

(4) (A) In the case of a trust described in Section 23701n, or in the case of a corporation described in Section 23701h, all of the stock of which was acquired before January 1, 1961, by a trust described in Section 23701n, any indebtedness incurred by that trust or that corporation before January 1, 1961, in connection with real property ~~which~~ *that* is leased before January 1, 1961, and any indebtedness incurred by that trust or that corporation on or after that date necessary to carry out the terms of that lease, shall not be considered as an indebtedness with respect to that trust or that corporation for purposes of this section.

(B) In the application of paragraph (1) of subdivision (a), if a trust described in Section 23701n forming part of a supplemental unemployment compensation benefit plan lends any money to another trust described in Section 23701n forming part of the same plan, that loan shall not be treated as an indebtedness of the borrowing trust, except to the extent that the loaning trust—

(i) Incurs any indebtedness in order to make that loan,

(ii) Incurred indebtedness before the making of that loan which would not have been incurred but for the making of that loan, or

(iii) Incurred indebtedness after the making of that loan which would not have been incurred but for the making of that loan and ~~which~~ *that* was reasonably foreseeable at the time of making that loan.

(c) Subdivision (a) shall not apply to a loan made by a trust described in Section 23701n to the employer (or to a renewal of that loan or, if the loan is repayable upon demand, to a continuation

1 of that loan) if the loan bears a reasonable rate of interest, and if  
2 (in the case of a making or renewal)—

3 (1) The employer is prohibited (at the time of that making or  
4 renewal) by any law of the United States or regulation thereunder  
5 from directly or indirectly pledging, as security for the loan, a  
6 particular class or classes of his or her assets the value of which (at  
7 that time) represents more than one-half of the value of all his or  
8 her assets;

9 (2) The making or renewal, as the case may be, is approved in  
10 writing as an investment that is consistent with the exempt  
11 purposes of the trust by a trustee who is independent of the  
12 employer, and no other independent trustee had previously refused  
13 to give that written approval; and

14 (3) Immediately following the making or renewal, as the case  
15 may be, the aggregate amount loaned by the trust to the employer,  
16 without the receipt of adequate security, does not exceed 25  
17 percent of the value of all the assets of the trust.

18 (4) For purposes of paragraph (2) the term “trustee” means,  
19 with respect to any trust for which there is more than one trustee  
20 who is independent of the employer, a majority of those  
21 independent trustees. For purposes of paragraph (3), the  
22 determination as to whether any amount loaned by the trust to the  
23 employer is loaned without the receipt of adequate security shall  
24 be made without regard to subdivision (b).

25 SEC. 334. Section 46622 of the Revenue and Taxation Code  
26 is amended to read:

27 46622. (a) It is the intent of the Legislature that the State  
28 Board of Equalization, its staff, and the Attorney General pursue  
29 settlements as authorized under this section with respect to fee  
30 matters in dispute that are the subject of protests, appeals, or refund  
31 claims, consistent with a reasonable evaluation of the costs and  
32 risks associated with litigation of these matters.

33 (b) (1) Subject to paragraph (2), the executive director or chief  
34 counsel, if authorized by the executive director, of the board may  
35 recommend to the State Board of Equalization, itself, a settlement  
36 of any civil fee matter in dispute.

37 (2) No recommendation of settlement shall be submitted to the  
38 board unless and until that recommendation has been submitted by  
39 the executive director or chief counsel to the Attorney General.  
40 Within 30 days of receiving that recommendation, the Attorney

General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of fee in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the feepayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the feepayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation of settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or ~~disapproved~~ *disapproved* by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board

1 disapproves a recommendation for settlement, the matter shall be  
2 remanded to board staff for further negotiation, and may be  
3 resubmitted to the board, in the same manner and subject to the  
4 same requirements as the initial submission, at the discretion of the  
5 executive director or chief counsel.

6 (f) All settlements entered into pursuant to this section shall be  
7 final and nonappealable, except upon a showing of fraud or  
8 misrepresentation with respect to a material fact.

9 (g) Any proceedings undertaken by the board itself pursuant to  
10 a settlement as described in this section shall be conducted in a  
11 closed session or sessions.

12 (h) This section shall apply only to fee matters in dispute on or  
13 after the effective date of the act adding this subdivision.

14 (i) The Legislature finds that it is essential for fiscal purposes  
15 that the settlement program authorized by this section be  
16 expeditiously implemented. Accordingly, Chapter 3.5  
17 (commencing with Section 11340) of Part 1 of Division 3 of Title  
18 2 of the Government Code shall not apply to any determination,  
19 rule, notice, or guideline established or issued by the board in  
20 implementing and administering the settlement program  
21 authorized by this section.

22 SEC. 335. Section 55337 of the Revenue and Taxation Code  
23 is amended to read:

24 55337. (a) If any officer or employee of the board recklessly  
25 disregards board-published procedures, a taxpayer aggrieved by  
26 that action or omission may bring an action for damages against  
27 the State of California in superior court.

28 (b) In any action brought under subdivision (a), upon finding  
29 of liability on the part of the State of California, the state shall be  
30 liable to the plaintiff in an amount equal to the sum of all of the  
31 following:

32 (1) Actual and direct monetary damages sustained by the  
33 plaintiff as a result of the actions or omissions.

34 (2) Reasonable litigation costs, including any of the following:

35 (A) Reasonable court costs.

36 (B) Prevailing market rates for the kind or quality of services  
37 furnished in connection with any of the following:

38 (i) The reasonable expenses of expert witnesses in connection  
39 with the civil proceedings, except that no expert witness shall be

1 compensated at a rate in excess of the highest rate of compensation  
2 for expert witnesses paid by the State of California.

3 (ii) The reasonable cost of any study, analysis, engineering  
4 report, test, or project that is found by the court to be necessary for  
5 the preparation of the party's case.

6 (iii) Reasonable fees paid or incurred for the services of  
7 attorneys ~~in connections~~ *connection* with the civil proceeding,  
8 except that those fees shall not be in excess of seventy-five dollars  
9 (\$75) per hour unless the court determines that an increase in the  
10 cost of living or a special factor, such as the limited availability of  
11 qualified attorneys for the proceeding, justifies a higher rate.

12 (c) In the awarding of damages under subdivision (b), the court  
13 shall take into consideration the negligence or omissions, if any,  
14 on the part of the plaintiff which contributed to the damages.

15 (d) Whenever it appears to the court that the taxpayer's position  
16 in the proceeding brought under subdivision (a) is frivolous, the  
17 court may impose a penalty against the plaintiff in an amount not  
18 to exceed ten thousand dollars (\$10,000). A penalty so imposed  
19 shall be paid upon notice and demand from the board and shall be  
20 collected as a tax imposed under this part.

21 SEC. 336. Section 104.7 of the Streets and Highways Code is  
22 amended to read:

23 104.7. (a) Unless otherwise provided by statute, when  
24 requested by a city, county, or special district, the department shall  
25 provide information regarding, and shall lease, unoccupied,  
26 unimproved property that is held for future highway purposes to  
27 the city, county, or special district within which the property is  
28 located. The city, county, or special district may use the leased  
29 property first for agricultural and community garden purposes,  
30 and second for recreational purposes, on terms and conditions not  
31 unreasonably inhibiting the use of the property, including, but not  
32 limited to, assumption of liability and installation and removal of  
33 improvements. The lease shall be for one dollar (\$1) per year for  
34 not less than one year and shall be renewable.

35 The city, county, or special district may sublease the property for  
36 agricultural or recreational purposes upon prior written  
37 notification to the department, and may proceed with the sublease  
38 unless disapproved by the department within 10 working days  
39 after the notice is sent to the department. The first priority for a



1 sublease shall be given to the owner of property contiguous to the  
2 leased land.

3 In a sublease of the property, the city, county, or special district  
4 may charge rental fees at least sufficient to pay its administrative  
5 costs. All money received by the city, county, or special district  
6 under a sublease, less administrative costs, shall be transmitted to  
7 the department for deposit in the State Highway Account.

8 (b) Unoccupied, unimproved property ~~which~~ *that* has  
9 commercial, industrial, or residential use as its most feasible or  
10 best use, as determined by the department, ~~are~~ *is* not subject to this  
11 section.

12 (c) The Legislature finds and declares that the lease of  
13 unoccupied, unimproved property pursuant to this section serves  
14 a public purpose.

15 SEC. 337. Section 3114.5 of the Streets and Highways Code  
16 is amended to read:

17 3114.5. (a) This section applies only to community facilities  
18 districts.

19 (b) Within 15 days after determination pursuant to Section  
20 53328 of the Government Code that the requisite number of voters  
21 ~~are~~ *is* in favor of the levy of a special tax, the clerk of the legislative  
22 body shall execute and record a notice of special tax lien in the  
23 office of the county recorder of each county in which all or any part  
24 of the community facilities district is located, and the county  
25 recorder shall accept that notice. The county recorder shall index  
26 the notice of special tax liens to the names of the property owners  
27 within the community facilities district and shown in the notice, as  
28 grantors. The notice of special tax lien shall contain the  
29 information required by Section 27288.1 of the Government Code  
30 and shall be in substantially the following form:

31

32 NOTICE OF SPECIAL TAX LIEN

33

34 Pursuant to the requirements of Section 3114.5 of the Streets  
35 and Highways Code and Section 53328.3 of the Government  
36 Code, the undersigned clerk of the legislative body of \_\_\_\_\_, State  
37 of California, hereby gives notice that a lien to secure payment of  
38 a special tax is hereby imposed by the (here insert name of  
39 legislative body) of (here insert city and name of county  
40 thereafter), State of California. The special tax secured by this lien



1 is authorized to be levied for the purpose of: (as applicable) (1)  
2 paying principal and interest on bonds, the proceeds of which are  
3 being used to finance (briefly describe facilities financed); (2)  
4 providing (briefly ~~described~~ describe facilities financed without  
5 bonds); (3) providing (briefly ~~described~~ describe services being  
6 financed).

7 If all or any portion of the proceeds of taxes or bonds of the  
8 district are authorized to be used to pay for cleanup of hazardous  
9 substances pursuant to subdivision ~~(e)~~ (f) of Section ~~53313(e)~~  
10 53313 of the Government Code, the notice shall also contain the  
11 following statement in large conspicuous type:  
12

13 TAXES LEVIED BY THIS DISTRICT MAY BE USED TO  
14 PAY FOR CLEANUP OF HAZARDOUS SUBSTANCES.  
15

16 The special tax is authorized to be levied within Community  
17 Facilities District No. \_\_\_\_ which has now been officially formed  
18 and the lien of the special tax is a continuing lien which shall secure  
19 each annual levy of the special tax and which shall continue in  
20 force and effect until the special tax obligation is prepaid,  
21 permanently satisfied, and canceled in accordance with law or  
22 until the special tax ceases to be levied and a notice of cessation of  
23 special tax is recorded in accordance with Section 53330.5 of the  
24 Government Code.

25 The rate, method of apportionment, and manner of collection of  
26 the authorized special tax is as follows: (here insert verbatim the  
27 description of the rate, method of apportionment, and manner of  
28 collection from the resolution of formation of the community  
29 facilities district). Conditions under which the obligation to pay  
30 the special tax may be prepaid and permanently satisfied and the  
31 lien of the special tax canceled are as follows: (here insert such  
32 conditions as are set forth in the resolution of formation or, if no  
33 provision has been made for prepayment of the special tax  
34 obligation, so state).

35 Notice is further given that upon the recording of this notice in  
36 the office of the county recorder, the obligation to pay the special  
37 tax levy shall become a lien upon all nonexempt real property  
38 within Community Facilities District No. \_\_\_\_ in accordance with  
39 Section 3115.5 of the Streets and Highways Code.

1 The name(s) of the owner(s) and the assessor's tax parcel  
2 number(s) of the real property included within this community  
3 facilities district and not exempt from the special tax are as  
4 follows: (insert name(s) of owner(s) and tax parcel number(s)  
5 shown on assessment roll).

6 Reference is made to the boundary map (or the amended  
7 boundary map) of the community facilities district recorded at  
8 Book \_\_\_\_ of Maps of Assessment and Community Facilities  
9 Districts at Page \_\_\_\_, in the office of the County Recorder for the  
10 County of \_\_\_\_, State of California which map is now the final  
11 boundary map of the community facilities district.

12 For further information concerning the current and estimated  
13 future tax liability of owners or purchasers of real property subject  
14 to this special tax lien, interested persons should contact (here  
15 provide name, address, and telephone number of the appropriate  
16 office, department, or bureau of the public entity designated  
17 pursuant to Section 53340.1 of the Government Code).

18  
19 (c) The county recorder shall endorse upon the notice the time  
20 and date of filing, and shall cross index the notice by reference to  
21 the page of the book of maps of assessment and community  
22 facilities districts in which the boundary map of the district was  
23 filed.

24 SEC. 338. Section 5101 of the Streets and Highways Code is  
25 amended to read:

26 5101. Whenever, in the opinion of the legislative body, the  
27 public interest or convenience may require, it may order the whole  
28 or any portion, either in length or in width, of any one or more of  
29 the streets, places, public ways, or property, easements, or  
30 rights-of-way, or tidelands, or submerged lands owned by any city,  
31 or tidelands or submerged lands leased by the state to any city for  
32 the construction of improvements authorized by subdivision (g),  
33 open or dedicated to public use, and any property for which an  
34 order for possession prior to judgment has been obtained, to be  
35 improved by or have constructed therein, over, or thereon, either  
36 singly or in any combination thereof, any of the following:

37 (a) The grading or ~~regarding~~ *regarding* *regrading*, the paving or repaving,  
38 the planking or replanking, the macadamizing or remacadamizing,  
39 the graveling or regravelling, or the oiling or reoiling thereof.



(b) The construction or reconstruction of sidewalks, crosswalks, steps, safety zones, platforms, seats, statuary, fountains, parks and parkways, recreation areas, including all structures, buildings, and other facilities necessary to make parks and parkways and recreation areas useful for the purposes for which intended, culverts, bridges, curbs, gutters, tunnels, subways, or viaducts.

(c) Sanitary sewers or instrumentalities of sanitation, together with the necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, disposal plants, connecting sewers, ditches, drains, conduits, tunnels, channels, or other appurtenances.

(d) Drains, tunnels, sewers, conduits, culverts, and channels for drainage purposes; *together* with necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, disposal plants, connecting sewers, ditches, drains, conduits, channels, and appurtenances.

(e) Poles, posts, wires, pipes, conduits, tunnels, lamps, and other suitable or necessary appliances for the purpose of lighting the streets, places, or public ways of any such city or property or rights-of-way owned by any such city, or for the purpose of furnishing electricity and electric service or telephone service to property within a city.

(f) Pipes, hydrants, and appliances for fire protection.

(g) Breakwaters, levees, bulkheads, groins, and walls of rock or other material to protect the streets, places, public ways, and other property in any such city, from overflow by water, or to prevent beach erosion or to promote accretion to beaches.

(h) Wells, pumps, dams, reservoirs, storage tanks, channels, tunnels, conduits, pipes, hydrants, meters, or other appurtenances for supplying or distributing a domestic water supply.

(i) Mains, services, pipes, fittings, valves, regulators, governors, meters, drips, drains, tanks, ditches, tunnels, conduits, channels, or other appurtenances for supplying or distributing a domestic or industrial gas supply.

(j) The construction or maintenance of bomb shelters or fallout shelters ~~which~~ *that* are primarily designed to protect and shelter the population from conventional or nuclear bomb or missile warhead explosions, shellfire, radiation, and fallout in the event of an enemy attack.

(k) Retaining walls, embankments, buildings, and any other structures or facilities necessary or suitable in connection with any of the work mentioned in this section.

(l) The planting of trees, shrubs, or other ornamental vegetation.

(m) The construction, repairing, maintaining, or improving of public mooring places for watercraft, channel improvements, and the building, repairing, maintaining, and improving of wharves, piers, docks, slips, quays, moles, port access routes, or other utilities, structures, and appliances necessary or convenient for the promotion or accommodation of commerce, navigation, and the protection of lands within the city, and for aiding and securing access to the waters of those lands to the people of the State of California, in the exercise of their rights to fish, or for the extension of public streets or places.

(n) Compaction of land, change of grade or contours, construction of caissons, retaining walls, drains, and other structures suitable for the purpose of stabilizing land.

(o) All other work ~~which~~ *that* may be deemed necessary to improve the whole or any portion of those streets, places, public ways, property, easements, or rights-of-way owned by the city.

(p) All other work auxiliary to any of the above, which may be required to carry out the above.

SEC. 339. Section 8833 of the Streets and Highways Code is amended to read:

8833. (a) When any foreclosure actions are ordered by the local agency or legislative body, or when subsequent installments and interest that are also to be made the subject of a foreclosure action thereafter become delinquent, and the foreclosure action is not commenced and a notice of pendency of action is not concurrently recorded, prior to the actual removal of the delinquent installment from the tax roll, the local agency or legislative body responsible for the foreclosure action on the delinquent installment shall do one of the following:

(1) Prior to the actual removal of the delinquent installment from the tax roll, the local agency or legislative body shall record or cause to have recorded in the county recorder's office in the county in which the real property is located, a Notice of Intent to Remove Delinquent Assessment Installment from the Tax Roll,



1 which contains the information set forth in subdivision (b). If  
2 action is taken under this paragraph, all of the following apply:

3 (A) Upon presentation of written proof of the recordation and  
4 a request for removal by the local agency or legislative body, the  
5 county auditor shall remove the delinquent installments from the  
6 tax roll. "Proof of recordation" includes, but is not limited to, a  
7 certified copy of the notice set forth in subdivision (b), or a copy  
8 of the recorded notice containing the county recorder's assigned  
9 document number, or a copy of the recorded notice containing a  
10 copy stamp from the office of the county recorder.

11 (B) From the date of the recordation, the county tax collector  
12 shall be credited upon the current assessment roll with the amount  
13 charged against him or her on account of the delinquent  
14 assessments or reassessments. If any person pays the delinquent  
15 installment referred to in the Notice of Intent to Remove  
16 Delinquent Assessment Installment from the Tax Roll to the  
17 county auditor prior to or subsequent to the actual removal of that  
18 delinquent installment from the tax roll, the county tax collector  
19 shall forward that payment to the local agency or legislative body  
20 responsible for the foreclosure action.

21 (C) From the date of recordation pursuant to this section, the  
22 assessment or reassessment or installment thereof or interest  
23 thereon, and penalties, costs, fees, and other charges accrued under  
24 applicable statutes, that are to be collected in a foreclosure action,  
25 shall no longer be collectible by the county tax collector.

26 (D) The county tax collector, in addition to the costs recovered  
27 in foreclosure, may charge the actual costs incurred in removing  
28 these sums from the tax roll or the performance of any other related  
29 duties as set forth in this section.

30 (E) Installments, interest, penalties, costs, fees, and other  
31 charges that do not become the subject of a foreclosure action shall  
32 remain collectible by the county tax collector as otherwise  
33 provided by applicable law.

34 (2) As an alternative to the notice requirement set forth in  
35 paragraph (1), the Counties of San Bernardino and Riverside may,  
36 simultaneously with the removal of the delinquent special  
37 assessment installment from the secured tax roll, provide  
38 notification on the secured tax roll that the installment has been  
39 removed from the roll for each parcel for which the delinquent  
40 special tax assessment was removed. The notice shall be displayed

1 in a manner ~~which~~ *that* conveys that the removal has occurred, and  
2 shall include the name and telephone number of the person or  
3 entity to be contacted to receive further information.

4 (b) The Notice of Intent to Remove Delinquent Assessment  
5 Installment from the Tax Roll shall be completed and recorded by  
6 or caused to be recorded by the local agency or legislative body  
7 responsible for the foreclosure action, and shall contain all of the  
8 following:

9 (1) The name of the local agency or legislative body, city, or  
10 other assessment district responsible for the foreclosure action.

11 (2) The legal description or assessor's parcel number of the  
12 property affected by the notice.

13 (3) The specific tax year and installment intended to be  
14 removed from the tax roll.

15 (4) The title, address, and telephone number of the employee,  
16 city official, or other authorized official who should be contacted  
17 regarding the delinquent assessment installment amount.

18 (5) The name of the owner shown on the last equalized  
19 assessment roll.

20 (c) Any local agency or legislative body that removed or caused  
21 to *be* removed a delinquent assessment installment from the ad  
22 valorem tax roll prior to January 1, 1997, shall record, by July 1,  
23 1997, a Notice of Intent to Remove Delinquent Assessment  
24 Installment from the Tax Roll or shall request the tax collector to  
25 retain the notice of delinquent assessment installment on the tax  
26 roll as set forth in paragraph (2) of subdivision (a). If the  
27 foreclosure action has been filed and a notice of pendency of action  
28 has been recorded in the county recorder's office prior to July 1,  
29 1997, this requirement does not apply.

30 (d) All costs associated with the county tax collector's and local  
31 agency's responsibilities as set forth in this section shall be  
32 recoverable by the local agency or legislative body through the  
33 foreclosure action.

34 (e) The recording of a notice of pendency of action in the  
35 county recorder's office in the county in which the real property  
36 is located, concurrent with the commencement of a foreclosure  
37 action ordered by the local agency or legislative body and  
38 commenced prior to the actual removal from the tax roll of the  
39 delinquent installment ~~which~~ *that* is the subject of the foreclosure



1 action, constitutes compliance with the notice requirements of this  
2 section.

3 SEC. 340. Section 10100.2 of the Streets and Highways Code  
4 is amended to read:

5 10100.2. (a) (1) Whenever the public interest or  
6 convenience requires, the legislative body may use the powers of  
7 this division to pay, or make funds available to enable the owners  
8 of lots or parcels of real property within the district to pay, for  
9 either of the following:

10 (A) Work deemed necessary to bring real property or buildings,  
11 including privately owned real property or buildings, into  
12 compliance with seismic safety standards or regulations. The  
13 legislative body shall declare that public loans or funds *provided*  
14 to owners of private buildings for seismic strengthening of  
15 unreinforced buildings or other buildings, or real property,  
16 pursuant to this section constitute a public purpose resulting in a  
17 public benefit. Only work certified as necessary to comply with  
18 seismic safety standards or regulations by local building officials  
19 may be financed. No project involving the dismantling of an  
20 existing building and its replacement by a new building or the  
21 construction of a new or substantially new building may be  
22 financed pursuant to this section, except as otherwise provided in  
23 subparagraph (B). Work on qualified historical buildings or  
24 structures shall be done in accordance with the State Historical  
25 Building Code (Part 2.7 (commencing with Section 18950) of  
26 Division 13 of the Health and Safety Code). Any financing for  
27 seismic strengthening of a residential structure containing units  
28 rented by households specified in Section 50079.5 of the Health  
29 and Safety Code before strengthening shall be subject to a  
30 regulatory agreement that will ensure that the number of those  
31 units in the structure will not be reduced and will remain available  
32 at affordable rents pursuant to Section 50053 of the Health and  
33 Safety Code as long as any assessments levied pursuant to this  
34 section on the parcel on which the structure is located remain  
35 unpaid.

36 No lot, parcel, or building shall be included in the district  
37 without the owner's consent.

38 (B) Within any area ~~which~~ *that* has been designated by the  
39 Governor as a disaster area or for which the Governor has  
40 proclaimed the existence of a state of emergency because of

1 earthquake damage, work deemed necessary to repair any damage  
2 to real property directly or indirectly caused by the occurrence of  
3 an earthquake cited in the Governor's designation or  
4 proclamation, or by aftershocks associated with that earthquake,  
5 including work to reconstruct, repair, shore up, or replace any real  
6 property or building damaged or destroyed by the earthquake or  
7 by its aftershocks. Work may be financed pursuant to this  
8 subparagraph only on real property or buildings identified in a  
9 resolution of intention to establish a district adopted within seven  
10 years of the date that the Governor designates the area as a disaster  
11 area or proclaims a state of emergency in the area.

12 (2) Any district created to finance seismic safety work on  
13 privately owned buildings, including repair, reconstruction, or  
14 replacement of privately owned buildings pursuant to this section,  
15 shall consist only of lots or parcels on which the legislative body  
16 finds that the buildings to be worked on, repaired, reconstructed,  
17 or replaced pursuant to this section, are located or were located  
18 before being damaged or destroyed by the earthquake ~~which~~ *that*  
19 is the subject of the Governor's designation or proclamation  
20 pursuant to subparagraph (B) of paragraph (1), or by the  
21 aftershocks of that earthquake.

22 (3) The Legislature hereby declares that the use of public funds  
23 pursuant to this section for seismic strengthening, repair, or  
24 reconstruction of privately owned real property or buildings  
25 constitutes a public purpose resulting in a public benefit. The use  
26 of funds pursuant to this section shall not be construed to be gifts  
27 of public funds in violation of Section 6 of Article XVI of the  
28 California Constitution.

29 (4) A loan or expenditure of funds made by a district pursuant  
30 to this section and secured by a tax assessment or a lien, or both that  
31 assessment and lien, on private property shall not, when combined  
32 with existing liens on the property, exceed 80 percent of the current  
33 appraised value of the property, as determined by an independent,  
34 certified appraiser, unless existing lienholders consent in writing  
35 to a higher loan-to-value ratio. Notice of the creation of a district  
36 or the authorization for the loan or expenditure of funds for the  
37 purposes set forth in this section shall be given to lienholders of  
38 record on the property included in the district at least 30 days prior  
39 to any vote of the governing body authorizing the creation of the



1 district or the loan or expenditure of funds ~~which~~ *that* could create  
2 a lien on the property.

3 (b) A district created to finance seismic safety or repair work  
4 pursuant to this section may include areas of territory that are not  
5 contiguous.

6 (c) At any time after the passage of the resolution provided for  
7 in subdivision (a) of Section 10312, the legislative body may make  
8 changes in or modify the improvements or reduce the assessment  
9 with respect to a particular lot or parcel within an assessment  
10 district created for the purposes of this section with the written  
11 consent of the owner of that lot or parcel.

12 (d) Any changes made within an assessment district created for  
13 the purposes of this section shall be made after notice and hearing,  
14 as provided in this division, except that changes may be made  
15 under any of the following circumstances:

16 (1) At the hearing on the report, changes that do any of the  
17 following:

18 (A) Eliminate a portion of the assessment district without  
19 increasing the amount of any assessment or substantially affecting  
20 the distribution of benefits from the improvements.

21 (B) Exclude territory ~~which~~ *that* will not be benefited by the  
22 remaining improvements without increasing the amount of any  
23 assessment.

24 (C) Modify the improvements or the assessment with respect  
25 to a particular lot or parcel within the assessment district with the  
26 written consent of the owner and without increasing the  
27 assessments on any other real property.

28 (2) At any time after the improvements are ordered and during  
29 the pendency of the proceedings to establish the assessment  
30 district.

31 (3) At any time after the adoption of the resolution provided for  
32 in subdivision (a) of Section 10312, to modify the improvements  
33 or reduce the assessment with respect to a particular lot or parcel  
34 within the assessment district with the written consent of the  
35 owner.

36 (e) An action to determine the validity of any assessments,  
37 bonds, bond anticipation notes, contracts, or improvements for the  
38 purposes of this section may be brought by the legislative body, or  
39 by any person designated by the legislative body, pursuant to  
40 Chapter 9 (commencing with Section 860) of Title 10 of the Code

1 of Civil Procedure. For this purpose, an improvement shall be  
2 deemed to be in existence upon its authorization and an assessment  
3 upon its confirmation.

4 (f) It is the intent of the Legislature that the powers conferred  
5 by this section shall be in addition and supplemental to, and not  
6 exclusive of, the powers conferred by any other law.

7 SEC. 341. Section 31071 of the Streets and Highways Code  
8 is amended to read:

9 31071. (a) The department may enter into financing  
10 agreements with the bank for the purpose of borrowing funds to  
11 finance or refinance the seismic retrofit project costs identified in  
12 paragraph (4) of subdivision (a) of Section 188.5. The bank may  
13 issue bonds for this purpose, pursuant to the authority granted to  
14 it under Chapter 5 (commencing with Section 63070) ~~of Chapter~~  
15 ~~2~~ of Division 1 of Title 6.7 of the Government Code, and deposit  
16 the proceeds from the bonds into the account. The amount of  
17 borrowing may be increased to fund necessary reserves,  
18 capitalized interest, interim bonds, including, but not limited to,  
19 commercial paper, costs of issuance, and administrative,  
20 financial, legal, and incidental services related to the bonds. The  
21 department shall pursue the most cost-effective and efficient  
22 financing plan for the bridge work identified in paragraph (4) of  
23 subdivision (a) of Section 188.5.

24 (b) To the extent provided in the governing documents, each of  
25 the bonds issued under this section shall be payable from, and  
26 secured by, all or a portion of the toll surcharge revenue in the  
27 account and the assets in that account.

28 (c) Prior to the issuance of bonds payable from the toll  
29 surcharge, the bank shall confirm that bonds issued under Chapter  
30 4.3 (commencing with Section 30950) shall not be impaired solely  
31 by action taken under this section, as evidenced by confirmation  
32 of the then existing ratings on these bonds, by the rating agencies  
33 then rating the bonds. This requirement shall not apply if the voters  
34 approve an increase in the toll rate pursuant to subdivision (b) of  
35 Section 30921.

36 SEC. 342. Section 2610 of the Unemployment Insurance  
37 Code is amended to read:

38 2610. "Disability base period," with respect to an individual  
39 who does not have an unexpired benefit year for unemployment  
40 compensation benefits, means for disability benefit periods

beginning in October, November, or December, the four calendar quarters ended in the next preceding month of June; the disability base period for disability benefit periods beginning in January, February, or March, shall be the four calendar quarters ended in the next preceding month of September; the disability base period for disability benefit periods beginning in April, May, or June, shall be the four calendar quarters ended in the next preceding month of December; the disability base period for disability benefit periods beginning in July, August, or September shall be the four calendar quarters ended with the next preceding month of March.

SEC. 343. Section 3305 of the Unemployment Insurance Code is amended to read:

3305. If the director finds that any individual falsely certifies the medical condition of any person in order to obtain family temporary disability insurance benefits, with the intent to defraud, whether for the maker or for any other person, the director shall assess a penalty against the individual in the amount of 25 percent of the benefits paid as a result of the false certification. The provisions of Article 8 (commencing with Section 1126) of Chapter 4 of Part 1, with respect to assessments, the provisions of Article 9 (commencing with Section 1176) of Chapter 4 of Part 1, with respect to refunds, and the provisions of Chapter 7 (commencing with Section 1701) of Part 1, with respect to collections, shall apply to the assessments provided by this section. Penalties collected under this section shall be deposited in the contingent fund.

SEC. 344. Section 10200 of the Unemployment Insurance Code is amended to read:

10200. The Legislature finds and declares the following:

(a) California's economy is being challenged by competition from other states and overseas. In order to meet this challenge, California's employers, workers, labor organizations, and government need to invest in a skilled and productive workforce, and in developing the skills of frontline workers. For purposes of this section, "frontline worker" means a worker who directly produces or delivers goods or services.

The purpose of this chapter is to establish a strategically designed employment training program to promote a healthy labor market in a growing, competitive economy that shall fund only projects that meet the following criteria:

1 (1) (A) Foster creation of high-wage, high-skilled jobs, or  
2 foster retention of high-wage, high-skilled jobs in manufacturing  
3 and other industries that are threatened by out-of-state and global  
4 competition, including, but not limited to, those industries in  
5 which targeted training resources for California's small and  
6 medium-sized business suppliers will increase the state's  
7 competitiveness to secure federal, private sector, and other  
8 nonstate funds. ~~Provide~~

9 (B) *Provide* for retraining contracts in companies that make a  
10 monetary or in-kind contribution to the funded training  
11 enhancements.

12 (2) Encourage industry-based investment in human resources  
13 development that promotes the competitiveness of California  
14 industry through productivity and product quality enhancements.

15 (3) Result in secure jobs for those who successfully complete  
16 training. All training shall be customized to the specific  
17 requirements of one or more employers or a discrete industry and  
18 shall include general skills that trainees can use in the future.

19 (4) Supplement, rather than displace, funds available through  
20 existing programs conducted by employers and  
21 government-funded training programs, such as the Workforce  
22 Investment Act of 1998 (*29 U.S.C. Sec. 2801 et. seq.*), the Carl D.  
23 Perkins Vocational Education Act (*P.L. 98-524*), CalWORKs  
24 (*Chapter 2 (commencing with Section 11200) of Part 3 of Division*  
25 *9 of the Welfare and Institutions Code*), the Enterprise Zone Act  
26 (*Chapter 12.8 (commencing with Section 7070) of Division 7 of*  
27 *Title 1 of the Government Code*), and the Stewart B. McKinney  
28 Homeless Assistance Act (*42 U.S.C. Sec. 290aa*), the California  
29 Community Colleges Economic Development Program, or  
30 apportionment funds allocated to the community colleges,  
31 regional occupational centers and programs, or other local  
32 educational agencies. In addition, it is further the intention of the  
33 Legislature that programs developed pursuant to this chapter shall  
34 not replace, parallel, supplant, compete with, or duplicate in any  
35 way already existing approved apprenticeship programs.

36 (b) The Employment Training Panel, in funding projects that  
37 meet the requirements of subdivision (a), shall give funding  
38 priority to those projects that best meet the following goals:





1 (1) Result in the growth of the California economy by  
2 stimulating exports from the state, and the production of goods and  
3 services that would otherwise be imported from outside the state.

4 (2) Train new employees of firms locating or expanding in the  
5 state that provide high-skilled, high-wage jobs and are committed  
6 to an ongoing investment in the training of frontline workers.

7 (3) Develop workers with skills that prepare them for the  
8 challenges of a high performance workplace of the future.

9 (4) Train workers who have been displaced, have received  
10 notification of impending layoff, or are subject to displacement,  
11 because of a plant closure, workforce reduction, changes in  
12 technology, or significantly increasing levels of international and  
13 out-of-state competition.

14 (5) Are jointly developed by business management and worker  
15 representatives.

16 (6) Develop career ladders for workers.

17 (7) Promote the retention and expansion of the state's  
18 manufacturing workforce.

19 (c) The program established through this chapter is to be  
20 coordinated with all existing employment training programs and  
21 economic development programs, including, but not limited to,  
22 programs such as the Workforce Investment Act of 1998 (29  
23 *U.S.C. Sec. 2801 et. seq.*), the California Community Colleges, the  
24 regional occupational programs, vocational education programs,  
25 joint labor-management training programs, and related programs  
26 under the Employment Development Department and the  
27 Technology, Trade, and Commerce Agency, *or any successor to*  
28 *that agency.*

29 SEC. 345. Section 2813.5 of the Vehicle Code is amended to  
30 read:

31 2813.5. (a) The commissioner shall have exclusive authority  
32 in the issuance of stickers as evidence that commercial vehicles  
33 have been inspected pursuant to Section 2813 and have been found  
34 to be in compliance with minimum safety standards established by  
35 the department. The commissioner may make and enforce  
36 regulations with respect to the issuance and display of the stickers  
37 upon commercial vehicles.

38 (b) It is unlawful for any unauthorized person, company,  
39 corporation, or public or private entity to possess, issue, or display  
40 upon a vehicle an unauthorized commercial vehicle safety



1 inspection sticker or a sticker that is either a facsimile of, or is  
2 substantially similar to, that issued by the commissioner.

3 (c) Any violation of subdivision (b) is a misdemeanor.

4 SEC. 346. Section 3072 of the Vehicle Code is amended to  
5 read:

6 3072. (a) (1) Except as otherwise provided in subdivision  
7 (b), if a franchisor seeks to enter into a franchise establishing an  
8 additional motor vehicle dealership within a relevant market area  
9 where the same recreational vehicle line-make is then represented,  
10 or seeks to relocate an existing motor vehicle dealership, the  
11 franchisor shall, in writing, first notify the board and each  
12 franchisee in that recreational vehicle line-make in the relevant  
13 market area of the franchisor's intention to establish an additional  
14 dealership or to relocate an existing dealership within or into that  
15 market area. Within 20 days of receiving the notice, satisfying the  
16 requirements of this section, or within 20 days after the end of any  
17 appeal procedure provided by the franchisor, any franchisee  
18 required to be given the notice may file with the board a protest to  
19 establishing or relocating the dealership. If, within this time, a  
20 franchisee files with the board a request for additional time to file  
21 a protest, the board or its secretary, upon a showing of good cause,  
22 may grant an additional 10 days to file the protest. When a protest  
23 is filed, the board shall inform the franchisor that a timely protest  
24 has been filed, that a hearing is required pursuant to Section 3066,  
25 and that the franchisor shall not establish or relocate the proposed  
26 dealership until the board has held a hearing as provided in Section  
27 3066, nor thereafter, if the board has determined that there is good  
28 cause for not permitting the dealership. In the event of multiple  
29 protests, hearings may be consolidated to expedite the disposition  
30 of the issue.

31 (2) The written notice shall contain, on the first page thereof in  
32 at least 12-point bold type and circumscribed by a line to segregate  
33 it from the rest of the text, the following statement:

34 "NOTICE TO DEALER: You have the right to file a protest  
35 with the NEW MOTOR VEHICLE BOARD in Sacramento and  
36 have a hearing on your protest under the terms of the California  
37 Vehicle Code if you oppose this action. You must file your protest  
38 with the board within 20 days of your receipt of this notice, or  
39 within 20 days after the end of any appeal procedure that is  
40 provided by us to you. If, within this time, you file with the board

1 a request for additional time to file a protest, the board or its  
2 secretary, upon a showing of good cause, may grant you an  
3 additional 10 days to file the protest.”

4 (b) Subdivision (a) does not apply to any of the following:

5 (1) The relocation of an existing dealership to any location that  
6 is both within the same city as, and within one mile of, the existing  
7 dealership location.

8 (2) The establishment at any location that is both within the  
9 same city as, and within one-quarter mile of, the location of a  
10 dealership of the same recreational vehicle line-make that has been  
11 out of operation for less than 90 days.

12 (3) A display of vehicles at a fair, exposition, or similar exhibit  
13 if no actual sales are made at the event and the display does not  
14 exceed 30 days. This paragraph may not be construed to prohibit  
15 a new vehicle dealer from establishing a branch office for the  
16 purpose of selling vehicles at the fair, exposition, or similar  
17 exhibit, even though that event is sponsored by a financial  
18 institution, as defined in Section 31041 of the Financial Code, or  
19 by a financial institution and a licensed dealer. The establishment  
20 of these branch offices, however, shall be in accordance with  
21 subdivision (a) where applicable.

22 (4) An annual show sponsored by a national trade association  
23 of recreational vehicle manufacturers that complies with all of the  
24 requirements of subdivision (d) of Section 11713.15.

25 (5) A motor vehicle dealership protesting the location of  
26 another dealership with the same recreational vehicle line-make  
27 within its relevant market area, if the dealership location subject  
28 to the protest was established on or before January 1, 2004.

29 (c) For the purposes of this section, the reopening of a  
30 dealership that has not been in operation for one year or more shall  
31 be deemed the establishment of an additional motor vehicle  
32 dealership.

33 (d) For the purposes of this section and Section 3073, a “motor  
34 vehicle dealership” or “dealership” is any authorized facility at  
35 which a franchisee offers for sale or lease, displays for sale or  
36 lease, or sells or leases new recreational vehicles, as defined in  
37 subdivision (a) of Section 18010 of the Health *and* Safety Code.  
38 A “motor vehicle dealership” or “dealership” does not include a  
39 dealer who deals exclusively in truck campers.

1 SEC. 347. Section 9250.13 of the Vehicle Code is amended to  
2 read:

3 9250.13. (a) (1) In addition to any other fees specified in this  
4 code and the Revenue and Taxation Code, a fee of six dollars (\$6)  
5 shall be paid at the time of registration or renewal of registration  
6 of every vehicle, except vehicles described in subdivision (a) of  
7 Section 5014.1, subject to registration under this code, except  
8 those vehicles that are expressly exempted under this code from  
9 the payment of registration fees.

10 (2) In addition to the fee required under paragraph (1), fee,  
11 upon the implementation of the permanent trailer identification  
12 plate program, and as part of the Commercial Vehicle Registration  
13 Act of 2001 (*Chapter 861 of the Statutes of 2000*), all commercial  
14 motor vehicles subject to Section 9400.1 shall pay a fee of six  
15 dollars (\$6).

16 (b) The money realized pursuant to this section shall be  
17 available, upon appropriation by the Legislature, for expenditure  
18 to offset the costs of increasing the uniformed field strength of the  
19 Department of the California Highway Patrol beyond its 1994  
20 staffing level and those costs associated with maintaining this new  
21 level of uniformed field strength and carrying out those duties  
22 specified in subdivision (a) of Section 830.2 of the Penal Code.

23 SEC. 348. Section 9400.1 of the Vehicle Code is amended to  
24 read:

25 9400.1. (a) (1) In addition to any other required fee, there  
26 shall be paid the fees set forth in this section for the registration of  
27 commercial motor vehicles operated either singly or in  
28 combination with a declared gross vehicle weight of 10,001  
29 pounds or more. Pickup truck and electric vehicle weight fees are  
30 not calculated under this section.

31 (2) The weight of a vehicle issued an identification plate  
32 pursuant to an application under Section 5014, and the weight of  
33 an implement of husbandry as defined in Section 36000, shall not  
34 be considered when calculating, pursuant to this section, the  
35 declared gross vehicle weight of a towing commercial motor  
36 vehicle that is owned and operated exclusively by a farmer or an  
37 employee of a farmer in the conduct of agricultural operations.

38 (3) Tow trucks that are utilized to render assistance to the  
39 motoring public or to tow or carry impounded vehicles shall pay  
40 fees in accordance with this section, except that the fee calculation

shall be based only on the gross vehicle weight rating of the towing or carrying vehicle. Upon each initial or transfer application for registration of a tow truck described in this paragraph, the registered owner or lessee or that owner's or lessee's designee, shall certify to the department the gross vehicle weight rating of the tow truck:

Gross Vehicle Weight Range	Fee
10,001–15,000	\$ 257
15,001–20,000	353
20,001–26,000	435
26,001–30,000	552
30,001–35,000	648
35,001–40,000	761
40,001–45,000	837
45,001–50,000	948
50,001–54,999	1,039
55,000–60,000	1,173
60,001–65,000	1,282
65,001–70,000	1,398
70,001–75,000	1,650
75,001–80,000	1,700

(b) The fees specified in subdivision (a) apply to ~~(1) an~~ both of the following:

(1) An initial or original registration occurring on or after December 31, 2001, to December 30, 2003, inclusive, of a commercial motor vehicle operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more ~~and (2) the~~.

(2) The renewal of registration of a commercial motor vehicle operated either singly or in combination, with a declared gross vehicle weight of 10,001 pounds or more for which registration expires on or after December 31, 2001, to December 30, 2003, inclusive.

(c) (1) For ~~(A)~~ both an initial or original registration occurring on or after December 31, 2003, of a commercial motor vehicle operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more, and ~~(B)~~ the renewal of registration of a commercial motor vehicle operated either singly

1 or in combination, with a declared gross vehicle weight of 10,001  
2 pounds or more for which registration expires on or after  
3 December 31, 2003, there shall be paid fees as follows:

Gross Vehicle Weight Range	Weight Code	Fee
10,001–15,000	A	\$ 332
15,001–20,000	B	447
20,001–26,000	C	546
26,001–30,000	D	586
30,001–35,000	E	801
35,001–40,000	F	937
40,001–45,000	G	1,028
45,001–50,000	H	1,161
50,001–54,999	I	1,270
55,000–60,000	J	1,431
60,001–65,000	K	1,562
65,001–70,000	L	1,701
70,001–75,000	M	2,004
75,001–80,000	N	2,064

37 (2) For the purpose of obtaining “revenue neutrality” as  
38 described in Sections 1 and 59 of Senate Bill 2084 of the  
39 1999–2000 Regular Session (Chapter 861 of the Statutes of 2000),  
40 the Director of Finance shall review the final 2003–04 Statement

of Transactions of the State Highway Account. If that review indicates that the actual truck weight fee revenues deposited in the State Highway Account do not total at least seven hundred eighty-nine million dollars (\$789,000,000), the Director of Finance shall instruct the department to adjust the schedule set forth in paragraph (1), but not to exceed the following fee amounts:

Gross Vehicle Weight Range	Weight Code	Fee
10,001–15,000	A	\$ 354
15,001–20,000	B	482
20,001–26,000	C	591
26,001–30,000	D	746
30,001–35,000	E	874
35,001–40,000	F	1,024
40,001–45,000	G	1,125
45,001–50,000	H	1,272
50,001–54,999	I	1,393
55,000–60,000	J	1,571
60,001–65,000	K	1,716
65,001–70,000	L	1,870
70,001–75,000	M	2,204
75,001–80,000	N	2,271

(d) (1) In addition to the fees set forth in subdivision (a), a Cargo Theft Interdiction Program Fee of three dollars (\$3) shall be paid at the time of initial or original registration or renewal of registration of each motor vehicle subject to weight fees under this section.

(2) This subdivision does not apply to vehicles used or maintained for the transportation of persons for hire, compensation or profit, and tow trucks.

(3) For vehicles registered under Article 4 (commencing with Section 8050) of Chapter 4, the fee imposed under this subdivision shall be apportioned as required for registration fees under that article.

(4) Funds collected pursuant to the Cargo Theft Interdiction Program shall not be proportionately reduced for each month and shall be transferred to the Motor Carriers Safety Improvement Fund.

(e) Notwithstanding Section 42270 or any other provision of law, of the moneys collected by the department under this section, one hundred twenty-two dollars (\$122) for each initial, original, and renewal registration shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Motor Vehicle Account in the State Transportation Fund. All other moneys collected by the department under this section shall be deposited to the credit of the State Highway Account in the State Transportation Fund. One hundred twenty-two dollars (\$122) of the fee imposed under this section shall not be proportionately reduced for each month. For vehicles registered under Article 4 (commencing with Section 8050) of Chapter 4, the fee shall be apportioned as required for registration under that article.

(f) (1) The department, in consultation with the Department of the California Highway Patrol, shall design and make available a set of distinctive weight decals that reflect the declared gross combined weight or gross operating weight reported to the department at the time of initial registration, registration renewal, or when a weight change is reported to the department pursuant to 9406.1. A new decal shall be issued on each renewal or when the weight is changed pursuant to Section 9406.1. The decal for a tow truck that is subject to this section shall reflect the gross vehicle weight rating or weight code.



(2) The department may charge a fee, not to exceed ten dollars (\$10), for the department's actual cost of producing and issuing each set of decals issued under paragraph (1).

(3) The weight decal shall be in sharp contrast to the background and shall be of a size, shape, and color that is readily legible during daylight hours from a distance of 50 feet.

(4) Each vehicle subject to this section shall display the weight decal on both the right and left sides of the vehicle.

(5) A person may not display upon a vehicle a decal issued pursuant to this subdivision that does not reflect the declared weight reported to the department.

(6) Notwithstanding subdivision (e) or any other provision of law, the moneys collected by the department under this subdivision shall be deposited in the State Treasury to the credit of the Motor Vehicle Account in the State Transportation Fund.

(7) This subdivision shall apply to vehicles subject to this section at the time of an initial registration, registration renewal, or reported weight change that ~~occurs~~ occurs on or after July 1, 2004.

SEC. 349. Section 9400.3 of the Vehicle Code is amended to read:

9400.3. (a) In order to ensure that Chapter 973 of the Statutes of 2000 is implemented as originally intended by the Legislature, the department may not ~~asses~~ assess the Cargo Theft Interdiction Program fee upon any commercial motor vehicle that has a declared gross vehicle weight of less than 10,001 pounds.

(b) The department shall issue refunds of, or credits for, any Cargo Theft Interdiction Program fee that is assessed upon a vehicle that does not meet the minimum weights described in Section 9400.1 or is a pickup truck or an electric vehicle.

SEC. 350. Section 9951 of the Vehicle Code is amended to read:

9951. (a) A manufacturer of a new motor vehicle sold or leased in this state; ~~which~~ that is equipped with one or more recording devices commonly referred to as "event data recorders (EDR)" or "sensing and diagnostic modules (SDM)," shall disclose that fact in the owner's manual for the vehicle.

(b) As used in this section, "recording device" means a device that is installed by the manufacturer of the vehicle and does one or

1 more of the following, for the purpose of retrieving data after an  
2 accident:

3 (1) Records how fast and in which direction the motor vehicle  
4 is traveling.

5 (2) Records a history of where the motor vehicle travels.

6 (3) Records steering performance.

7 (4) Records brake performance, including, but not limited to,  
8 whether brakes were applied before an accident.

9 (5) Records the driver's seatbelt status.

10 (6) Has the ability to transmit information concerning an  
11 accident in which the motor vehicle has been involved to a central  
12 communications system when an accident occurs.

13 (c) Data described in subdivision (b) that is recorded on a  
14 recording device may not be downloaded or otherwise retrieved by  
15 a person other than the registered owner of the motor vehicle,  
16 except under one of the following circumstances:

17 (1) The registered owner of the motor vehicle consents to the  
18 retrieval of the information.

19 (2) In response to an order of a court having jurisdiction to issue  
20 the order.

21 (3) For the purpose of improving motor vehicle safety,  
22 including for medical research of the human body's reaction to  
23 motor vehicle accidents, and the identity of the registered owner  
24 or driver is not disclosed in connection with that retrieved data.  
25 The disclosure of the vehicle identification number (VIN) for the  
26 purpose of improving vehicle safety, including for medical  
27 research of the human body's reaction to motor vehicle accidents,  
28 does not constitute the disclosure of the identity of the registered  
29 owner or driver.

30 (4) The data is retrieved by a licensed new motor vehicle dealer,  
31 or by an automotive technician as defined in Section 9880.1 of the  
32 Business and Professions Code, for the ~~the~~ purpose of diagnosing,  
33 servicing, or repairing the motor vehicle.

34 (d) A person authorized to download or otherwise retrieve data  
35 from a recording device pursuant to paragraph (3) of subdivision  
36 (c), may not release that data, except to share the data among the  
37 motor vehicle safety and medical research communities; to  
38 advance motor vehicle safety, and only if the identity of the  
39 registered owner or driver is not disclosed.



(e) (1) If a motor vehicle is equipped with a recording device that is capable of recording or transmitting information as described in paragraph (2) or (6) of subdivision (b) and that capability is part of a subscription service, the fact that the information may be recorded or transmitted shall be disclosed in the subscription service agreement.

(2) Subdivision (c) does not apply to subscription services meeting the requirements of paragraph (1).

(f) This section applies to all motor vehicles manufactured on or after July 1, 2004.

SEC. 351. Section 11515.2 of the Vehicle Code is amended to read:

11515.2. (a) ~~Whenever~~ *If* an insurance company makes a total loss settlement on a nonrepairable vehicle and takes possession of that vehicle, either itself or through an agent, the insurance company, an occupational licensee of the department authorized by the insurance company, or a salvage pool authorized by the insurance company, shall, within 10 days after receipt of title by the insurer, free and clear of all liens, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of fifteen dollars (\$15) to the department. An occupational licensee of the department may submit a certificate of license plate destruction in lieu of the actual license plate. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the fee, shall issue a nonrepairable vehicle certificate for the vehicle.

(b) ~~Whenever~~ *If* the owner of a nonrepairable vehicle retains possession of the vehicle, the insurance company shall notify the department of the retention on a form prescribed by the department. The insurance company shall also notify the insured or owner of the insured's or owner's responsibility to comply with this subdivision. The owner shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, the license plates, and a fee in the amount of fifteen dollars (\$15) to the department. The department, upon receipt of the certificate of ownership or other evidence of title, the license plates, and the fee, shall issue a nonrepairable vehicle certificate for the vehicle.

1 (c) ~~Whenever~~ *If* a nonrepairable vehicle is not the subject of an  
2 insurance settlement, the owner shall, within 10 days from the loss,  
3 forward the properly endorsed certificate of ownership or other  
4 evidence of ownership acceptable to the department, the license  
5 plates, and a fee in the amount of fifteen dollars (\$15) to the  
6 department.

7 (d) ~~Whenever~~ *If* a nonrepairable vehicle is not the subject of an  
8 insurance settlement, a self-insurer, as defined in Section 16052,  
9 shall, within 10 days of the loss, forward the properly endorsed  
10 certificate of ownership or other evidence of ownership acceptable  
11 to the department, the license plates, and a fee in the amount of ~~the~~  
12 fifteen dollars (\$15) to the department.

13 (e) Prior to sale or disposal of a nonrepairable vehicle, the  
14 owner, owner's agent, or salvage pool, shall obtain a properly  
15 endorsed nonrepairable vehicle certificate and deliver it to the  
16 purchaser within 10 days after payment in full for the  
17 nonrepairable vehicle and shall also comply with Section 5900.  
18 The department shall accept the endorsed nonrepairable vehicle  
19 certificate in lieu of the certificate of ownership or other evidence  
20 of ownership when accompanied by an application and other  
21 documents and fees, including, but not limited to, the fees required  
22 by Section 9265, as may be required by the department.

23 (f) This section does not apply to a vehicle that has been driven  
24 or taken without the consent of the owner thereof, until the vehicle  
25 has been recovered by the owner and only if the vehicle is a  
26 nonrepairable vehicle.

27 (g) A nonrepairable vehicle certificate shall be conspicuously  
28 labeled with the words "NONREPAIRABLE VEHICLE" across  
29 the front of the certificate.

30 (h) A violation of subdivision (a), (b), (d), or (e) is a  
31 misdemeanor, pursuant to Section 40000.11. Notwithstanding  
32 Section 40000.11, a violation of subdivision (c) is an infraction,  
33 except that, if committed with intent to defraud, a violation of  
34 subdivision (c) is a misdemeanor.

35 SEC. 352. Section 12509 of the Vehicle Code is amended to  
36 read:

37 12509. (a) Except as otherwise provided in subdivision (f) of  
38 Section 12514, the department, for good cause, may issue an  
39 instruction permit to any physically and mentally qualified person

1 who meets one of the following requirements and who applies to  
2 the department for an instruction permit:

3 (1) Is age 15 years and 6 months or ~~over~~ *older* and has  
4 successfully completed approved courses in automobile driver  
5 education and driver training as provided in paragraph (3) of  
6 subdivision (a) of Section 12814.6.

7 (2) Is age 15 years and 6 months or ~~over~~ *older* and has  
8 successfully completed an approved course in automobile driver  
9 education and is taking driver training as provided in paragraph (3)  
10 of subdivision (a) of Section 12814.6.

11 (3) Is age 15 years and 6 months and enrolled and participating  
12 in an integrated driver education *and training* program as provided  
13 in subparagraph (B) of paragraph (3) of subdivision (a) of Section  
14 12814.6.

15 (4) Is over the age of 16 years and is applying for a restricted  
16 driver's license pursuant to Section 12814.7.

17 (5) Is over the age of 17 years and 6 months.

18 (b) The applicant shall qualify for and be issued an instruction  
19 permit within 12 months from the date of the application.

20 (c) An instruction permit issued pursuant to subdivision (a)  
21 shall entitle the applicant to operate a vehicle, subject to the  
22 limitations imposed by this section and any other provisions of  
23 law, upon the highways for a period not exceeding 24 months from  
24 the date of the application.

25 (d) Except as provided in Section 12814.6, any person, while  
26 having in his or her immediate possession a valid permit issued  
27 pursuant to paragraphs (1) to (3), inclusive, of subdivision (a), may  
28 operate a motor vehicle, other than a motorcycle or a motorized  
29 bicycle, when accompanied by, and under the immediate  
30 supervision of, a California licensed driver with a valid license of  
31 the appropriate class, 18 years of age or ~~over~~ *older* whose driving  
32 privilege is not on probation. Except as provided in subdivision  
33 (e), an accompanying licensed driver at all times shall occupy a  
34 position within the driver's compartment that would enable the  
35 accompanying licensed driver to assist the person in controlling  
36 the vehicle as may be necessary to avoid a collision and to provide  
37 immediate guidance in the safe operation of the vehicle.

38 (e) Any person, while having in his or her immediate  
39 possession a valid permit issued pursuant to paragraphs (1) to (3),  
40 inclusive, of subdivision (a), who is age 15 years and 6 months or

1 ~~over older~~ and who has successfully completed approved courses  
2 in automobile *driver* education and driver training as provided in  
3 paragraph (3) of subdivision (a) of Section 12814.6, and any  
4 person, while having in his or her immediate possession a valid  
5 permit issued pursuant to subdivision (a), who is age 17 years and  
6 6 months or ~~over older~~, may, in addition to operating a motor  
7 vehicle pursuant to subdivision (d), also operate a motorcycle or  
8 a motorized bicycle, except that the person shall not operate a  
9 motorcycle or a motorized bicycle during hours of darkness, shall  
10 stay off any freeways that have full control of access and no  
11 crossings at grade, and shall not carry any passenger except an  
12 instructor licensed under Chapter 1 (commencing with Section  
13 11100) of Division 5 of this code or a qualified instructor as  
14 defined in Section ~~18252.2~~ 41907 of the Education Code.

15 (f) Any person, while having in his or her immediate  
16 possession a valid permit issued pursuant to paragraph (4) of  
17 subdivision (a), may only operate a government-owned motor  
18 vehicle, other than a motorcycle or a motorized bicycle, when  
19 taking the driver training instruction administered by the  
20 California National Guard as required by paragraph (2) of  
21 subdivision (a) of Section ~~21814.7~~ 12814.7.

22 (g) The department may also issue an instruction permit to a  
23 person who has been issued a valid driver's license to authorize the  
24 person to obtain driver training instruction and to practice that  
25 instruction in order to obtain another class of driver's license or an  
26 endorsement.

27 (h) The department may further restrict permits issued under  
28 subdivision (a) as it may determine to be appropriate to assure the  
29 safe operation of a motor vehicle by the permittee.

30 SEC. 353. Section 22100 of the Vehicle Code is amended to  
31 read:

32 22100. Except as provided in Section 22100.5 or 22101, the  
33 driver of any vehicle intending to turn upon a highway shall do so  
34 as follows:

35 (a) Right Turns. Both the approach for a right-hand turn and a  
36 right-hand turn shall be made as close as practicable to the  
37 right-hand curb or edge of the roadway except:

38 (1) Upon a highway having three marked lanes for traffic  
39 moving in one direction ~~which~~ *that* terminates at an intersecting  
40 highway accommodating traffic in both directions, the driver of a

1 vehicle in the middle lane may turn right into any lane lawfully  
2 available to traffic moving in that direction upon the roadway  
3 being entered.

4 (2) ~~When~~ If a right-hand turn is made from a one-way highway  
5 at an intersection, a driver shall approach the turn as provided in  
6 *this* subdivision-~~(a)~~ and shall complete the turn in any lane lawfully  
7 available to traffic moving in that direction upon the roadway  
8 being entered.

9 (3) Upon a highway having an additional lane or lanes marked  
10 for a right turn by appropriate signs or markings, the driver of a  
11 vehicle may turn right from any lane designated and marked for  
12 that turning movement.

13 (b) Left Turns. The approach for a left turn shall be made as  
14 close as practicable to the left-hand edge of the extreme left-hand  
15 lane or portion of the roadway lawfully available to traffic moving  
16 in the direction of travel of ~~such~~ *the* vehicle and, when turning at  
17 an intersection, the left turn shall not be made before entering the  
18 intersection. After entering the intersection, the left turn shall be  
19 made so as to leave the intersection in a lane lawfully available to  
20 traffic moving in that direction upon the roadway being entered,  
21 except:

22 ~~(1) Upon that upon~~ a highway having three marked lanes for  
23 traffic moving in one direction ~~which that~~ terminates at an  
24 intersecting highway accommodating traffic in both directions,  
25 the driver of a vehicle in the middle lane may turn left into any lane  
26 lawfully available to traffic moving in that direction upon the  
27 roadway being entered.

28 SEC. 354. Section 25803 of the Vehicle Code is amended to  
29 read:

30 25803. (a) All vehicles not otherwise required to be equipped  
31 with headlamps, rear lights, or reflectors by this chapter shall, if  
32 operated on a highway during darkness, be equipped with a lamp  
33 exhibiting a red light visible from a distance of 500 feet to the rear  
34 of the vehicle. In addition, all of these vehicles operated alone or  
35 as the first vehicle in a combination of vehicles, shall be equipped  
36 with at least one lighted lamp exhibiting a white light visible from  
37 a distance of 500 feet to the front of the vehicle.

38 (b) A vehicle shall also be equipped with an amber reflector on  
39 the front near the left side and a red reflector on the rear near the  
40 left side. The reflectors shall be mounted on the vehicle not lower



1 than 16 inches nor higher than 60 inches above the ground and so  
2 designed and maintained as to be visible during darkness from all  
3 distances within 500 feet from the vehicle when directly in front  
4 of a motor vehicle displaying lawful lighted headlamps  
5 undimmed.

6 (c) In addition, if a vehicle described in subdivision (a) or the  
7 load thereon has a total outside width in excess of 100 inches there  
8 shall be displayed during darkness at the left outer extremity at  
9 least one amber light visible under normal atmospheric conditions  
10 from a distance of 500 feet to the front, sides, and rear. At all other  
11 times there shall be displayed at the left outer extremity a solid red  
12 or ~~fluorescent~~ *fluorescent* orange flag or cloth not less than 12  
13 inches square.

14 SEC. 355. Section 31032.1 of the Water Code is amended to  
15 read:

16 31032.1. A district may fix, as an alternative to the charge  
17 prescribed by Section 31031, in each fiscal year, water standby or  
18 availability assessments of not to exceed thirty dollars (\$30) per  
19 acre per year for each acre of land, or thirty dollars (\$30) per year  
20 for each parcel of land less than an acre within the district to which  
21 water is made available for any purpose by the district, whether the  
22 water is actually used or not. The board of directors of a district  
23 ~~which~~ *that* fixes the assessment may establish schedules varying  
24 the assessment according to the land uses and the degree of  
25 availability or quantity of use of water to the affected lands, and  
26 may restrict the assessment to lands lying within one or more  
27 improvement districts within the district.

28 A district may elect to have the assessments for the fiscal year  
29 collected on the tax roll in the same manner, by the same persons  
30 and at the same time as, together with and not separately from, its  
31 general taxes. In that event, it shall cause a written report to be  
32 prepared and filed with the secretary which *report shall* contain a  
33 description of each parcel of real property and the amount of the  
34 assessment for each parcel for the year.

35 SEC. 356. Section 34620 of the Vehicle Code is amended to  
36 read:

37 34620. (a) Except as provided in subdivision (b) and Section  
38 34622, no motor carrier of property shall operate a commercial  
39 motor vehicle on any public highway in this state, unless it has  
40 complied with Section 34507.5 and has registered with the

department its carrier identification number authorized or assigned thereunder, and holds a valid ~~motor~~ motor carrier permit issued to that motor carrier by the department. The department shall issue a motor carrier permit upon the carrier's written request, compliance with Sections 34507.5, 34630, 34640, and subdivisions (e) and (h) of Section 34501.12, for motor carriers listed in that section, and the payment of the fee required by this chapter.

(b) No person shall contract with, or otherwise engage the services of, a motor carrier of property, unless that motor carrier holds a valid motor carrier of property permit issued by the department. No motor carrier of property shall contract or subcontract with, or otherwise engage the services of, another motor carrier of property, until the contracted motor carrier of property provides certification in the manner prescribed by this section, of compliance with subdivision (a). This certification shall be completed by the contracted motor carrier of property and shall include a provision requiring the contracted motor carrier of property to immediately notify the person to whom they are contracted if the contracted motor carrier of property's permit is suspended or revoked. A copy of the contracted motor carrier of property's permit shall accompany the required certificate. The Department of the California Highway Patrol shall, by regulation, prescribe the format for the certificate and may make available an optional specific form for that purpose. The certificate, or a copy thereof, shall be maintained by each involved party for the duration of the contract or period of service plus two years, and shall be presented for inspection at the location designated by each carrier under Section 34501.10, immediately upon the request of an authorized employee of the Department of the California Highway Patrol.

SEC. 357. Section 35401.7 of the Vehicle Code is amended to read:

35401.7. (a) The limitations of access specified in subdivision (d) of Section 35401.5 do not apply to licensed carriers of livestock when those carriers are directly ~~enroute~~ *en route* to or from a point of loading or unloading of livestock on those portions of State Highway Route 101 located in the Counties of Del Norte, Humboldt, and Mendocino from its junction with State Highway

1 Route 1 near Leggett north to the Oregon border, if the travel is  
2 necessary and incidental to the shipment of the livestock.

3 (b) The exemption allowed under this section does not apply  
4 unless ~~all~~ *both* of the following conditions are met:

5 (1) The length of the truck tractor, in combination with the  
6 semitrailer used to transport the livestock, does not exceed a total  
7 of 70 feet.

8 (2) The distance from the kingpin to the rearmost axle of the  
9 semitrailer does not exceed 40 feet.

10 (c) The exemption allowed under this section does not apply to  
11 travel conducted on the day prior to, or on the day of, any federally  
12 recognized holiday.

13 (d) The Department of the California Highway Patrol, in  
14 consultation with the Department of Transportation and in  
15 accordance with recommendations from the Department of the  
16 California ~~Highways~~ Highway Patrol's study issued on May 1,  
17 2003, of the effects of the statutory exemption, shall continue the  
18 comprehensive study on the effect that the exemption provided  
19 under this section has on the public safety during the extended  
20 effective period of the exemption. The findings of this additional  
21 study shall be reported to the Legislature on or before January 1,  
22 2006.

23 (e) This section shall remain in effect only until January 1,  
24 2007, and as of that date is repealed, unless a later enacted statute,  
25 that is enacted before January 1, 2007, deletes or extends that date.

26 SEC. 358. Section 1552 of the Water Code is amended to read:

27 1552. The money in the Water Rights Fund is available for  
28 expenditure, upon appropriation by the Legislature, for the  
29 following purposes:

30 (a) For expenditure by the State Board of Equalization in the  
31 administration of this chapter and the Fee Collection Procedures  
32 Law (Part 30 (commencing with Section 55001) of Division 2 of  
33 the Revenue and Taxation Code) in connection with any fee or  
34 expense subject to this chapter.

35 (b) For the payment of refunds, pursuant to Part 30  
36 (commencing with Section 55001) of Division 2 of the Revenue  
37 and Taxation Code, of fees or expenses collected pursuant to this  
38 chapter.

39 (c) For expenditure by the board for the purposes of carrying  
40 out this division, Division 1 (commencing with Section 100), Part

2 (commencing with Section 10500) of Division 6, and Article 7  
2 (commencing with Section 13550) of Chapter 7 of Division 7.

3 (d) For expenditures by the board for the purposes of carrying  
4 out ~~Section~~ *Sections* 13160 and 13160.1 in connection with  
5 activities involving hydroelectric power projects subject to  
6 licensing by the Federal Energy Regulatory Commission.

7 (e) For expenditures by the board for the purposes of carrying  
8 out ~~Section~~ *Sections* 13140 and 13170 in connection with plans  
9 and policies that address the diversion or use of water.

10 SEC. 359. Section 12749.95 of the Water Code, as added by  
11 Chapter 730 of the Statutes of 2003, is amended and renumbered  
12 to read:

13 ~~12749.95.~~

14 *12749.97.* Notwithstanding Sections 12749.93 and 12749.94,  
15 it is the intent of the Legislature that no funds be appropriated for  
16 state cooperation in the Murrieta Creek Flood Control Project  
17 before July 1, 2013.

18 SEC. 360. Section 13269 of the Water Code is amended to  
19 read:

20 13269. (a) (1) On and after January 1, 2000, the provisions  
21 of subdivisions (a) and (c) of Section 13260, subdivision (a) of  
22 Section 13263, or subdivision (a) of Section 13264 may be waived  
23 by the state board or a regional board as to a specific discharge or  
24 type of discharge if the state board or a regional board determines,  
25 after any necessary state board or regional board meeting, that the  
26 waiver is consistent with any applicable state or regional water  
27 quality control plan and is in the public interest. The state board  
28 or a regional board shall give notice of any necessary meeting by  
29 publication pursuant to Section 11125 of the Government Code.

30 (2) A waiver may not exceed five years in duration, but may be  
31 renewed by the state board or a regional board. The waiver shall  
32 be conditional and may be terminated at any time by the state board  
33 or a regional board. The conditions of the waiver shall include, but  
34 need not be limited to, the performance of individual, group, or  
35 watershed-based, monitoring, except as provided in paragraph (3).  
36 Monitoring requirements shall be designed to support the  
37 development and implementation of the waiver program,  
38 including, but not limited to, verifying the adequacy and  
39 effectiveness of the waiver's conditions. In establishing  
40 monitoring requirements, the regional board may consider the

1 volume, duration, frequency, and constituents of the discharge; the  
2 extent and type of existing monitoring activities, including, but not  
3 limited to, existing watershed-based, compliance, and  
4 effectiveness monitoring efforts; the size of the project area; and  
5 other relevant factors. Monitoring results shall be made available  
6 to the public.

7 (3) The state board or a regional board may waive the  
8 monitoring requirements described in this subdivision for  
9 discharges that it determines do not pose a significant threat to  
10 water quality.

11 (4) (A) The state board or a regional board may include as a  
12 condition of a waiver the payment of an annual fee established by  
13 the state board in accordance with subdivision (f) of Section  
14 13260.

15 (B) Funds generated by the payment of the fee shall be  
16 deposited in the Waste Discharge Permit Fund for expenditure,  
17 upon appropriation by the Legislature, by the state board or  
18 appropriate regional board for the purpose of carrying out  
19 activities limited to those necessary to establish and implement the  
20 waiver program pursuant to this section. The total amount of  
21 annual fees collected pursuant to this section shall not exceed the  
22 costs of those activities necessary to establish and implement  
23 waivers of waste discharge requirements pursuant to this section.

24 (C) In establishing the amount of a fee that may be imposed on  
25 irrigated agriculture operations pursuant to this section, the state  
26 board shall consider relevant factors, including, but not limited to,  
27 all of the following:

28 (i) The size of the operations.

29 (ii) Any compliance costs borne by the operations pursuant to  
30 state and federal water quality regulations.

31 (iii) Any costs associated with water quality monitoring  
32 performed or funded by the operations.

33 (iv) Participation in a watershed management program  
34 approved by the applicable regional ~~water quality control~~ board.

35 (D) In establishing the amount of a fee that may be imposed on  
36 silviculture operations pursuant to this section, the state board  
37 shall consider relevant factors, including, but not limited to, all of  
38 the following:

39 (i) The size of the operations.

1 (ii) Any compliance costs borne by the operations pursuant to  
2 state and federal water quality regulations.

3 (iii) Any costs associated with water quality monitoring  
4 performed or funded by the operations.

5 (iv) The average annual number of timber harvest plans  
6 proposed by the operations.

7 (5) The state board or a regional board shall give notice of the  
8 adoption of a waiver by publication within the affected county or  
9 counties as set forth in Section 6061 of the Government Code.

10 (b) (1) A waiver in effect on January 1, 2000, shall remain  
11 valid until January 1, 2003, unless the regional board terminates  
12 that waiver prior to that date. All waivers that were valid on  
13 January 1, 2000, and granted an extension until January 1, 2003,  
14 and not otherwise terminated, may be renewed by a regional board  
15 in five-year increments.

16 (2) Notwithstanding paragraph (1), a waiver for an onsite  
17 sewage treatment system that is in effect on January 1, 2002, shall  
18 remain valid until June 30, 2004, unless the regional board  
19 terminates the waiver prior to that date. Any waiver for onsite  
20 sewage treatment systems adopted or renewed after June 30, 2004,  
21 shall be consistent with the applicable regulations or standards for  
22 onsite sewage treatment systems adopted or retained in accordance  
23 with Section 13291.

24 (c) Upon notification of the appropriate regional board of the  
25 discharge or proposed discharge, except as provided in subdivision  
26 (d), the provisions of subdivisions (a) and (c) of Section 13260,  
27 subdivision (a) of Section 13263, and subdivision (a) of Section  
28 13264 do not apply to a discharge resulting from any of the  
29 following emergency activities:

30 (1) Immediate emergency work necessary to protect life or  
31 property or immediate emergency repairs to public service  
32 facilities necessary to maintain service as a result of a disaster in  
33 a disaster-stricken area in which a state of emergency has been  
34 proclaimed by the Governor pursuant to Chapter 7 (commencing  
35 with Section 8550) of Division 1 of Title 2 of the Government  
36 Code.

37 (2) Emergency projects undertaken, carried out, or approved  
38 by a public agency to maintain, repair, or restore an existing  
39 highway, as defined in Section 360 of the Vehicle Code, except for  
40 a highway designated as an official state scenic highway pursuant

1 to Section 262 of the Streets and Highways Code, within the  
2 existing right-of-way of the highway, damaged as a result of fire,  
3 flood, storm, earthquake, land subsidence, gradual earth  
4 movement, or landslide within one year of the damage. This  
5 paragraph does not exempt from this section any project  
6 undertaken, carried out, or approved by a public agency to expand  
7 or widen a highway damaged by fire, flood, storm, earthquake,  
8 land subsidence, gradual earth movement, or landslide.

9 (d) Subdivision (c) is not a limitation of the authority of a  
10 regional board under subdivision (a) to determine that any  
11 provision of this division shall not be waived or to establish  
12 conditions of a waiver. Subdivision (c) shall not apply to the extent  
13 that it is inconsistent with any waiver or other order or prohibition  
14 issued under this division.

15 (e) The regional boards and the state board shall require  
16 compliance with the conditions pursuant to which waivers are  
17 granted under this section.

18 (f) Prior to renewing any waiver for a specific type of discharge  
19 established under this section, the state board or a regional board  
20 shall review the terms of the waiver policy at a public hearing. At  
21 the hearing, the state board or a regional board shall determine  
22 whether the discharge for which the waiver policy was established  
23 should be subject to general or individual waste discharge  
24 requirements.

25 SEC. 361. Section 13368 of the Water Code is amended to  
26 read:

27 13368. (a) The San Diego Bay Advisory Committee for  
28 Ecological Assessment is hereby established.

29 (b) The committee shall prepare a report on all of the following:

30 (1) An evaluation of existing and historic data and trends in the  
31 overall health of San Diego Bay, including, but not limited to,  
32 trends in pollutant levels and trends in the numbers and diversity  
33 of species.

34 (2) The identification of habitat enhancement projects in the  
35 Integrated Natural Resources Management Plan for San Diego  
36 Bay that may be necessary to provide increased population and  
37 diversity for species within San Diego Bay.

38 (3) An assessment of, and recommendations for, including  
39 feasibility and economic practicability of, the best available  
40 technology that is economically available and the best





1 conventional pollution control technology related to stormwater  
2 treatment systems meeting toxicity standards.

3 (c) For the purposes of carrying out subdivision (b), the  
4 committee shall consider and make use of the Integrated Natural  
5 Resources Management Plan for San Diego Bay prepared by the  
6 United States Navy in conjunction with numerous stakeholders.

7 (d) Upon the request of the United States Navy, the committee  
8 may provide oversight and assistance in the Navy's development  
9 of alternative acute toxicity effluent limitations for discharges of  
10 stormwater runoff associated with industrial activity, as  
11 authorized by the San Diego Regional Water Quality Control  
12 Board, in approval of the National Pollutant Discharge  
13 Elimination System permits for Naval Base Point Loma, Naval  
14 Base San Diego, and Naval Base Coronado.

15 (e) (1) The committee shall be chaired by the Chairperson of  
16 the San Diego Unified Port District. The following entities may  
17 each appoint one representative to the committee:

18 (A) The San Diego City Council.

19 (B) The City of Chula Vista.

20 (C) The City of Coronado.

21 (D) The City of Imperial Beach.

22 (E) The City of National City.

23 (F) The Environmental Health Coalition.

24 (G) The San Diego Baykeeper.

25 (H) The San Diego Audubon Society.

26 (I) The San Diego Chapter of the Surfrider Foundation.

27 (J) The Sierra Club.

28 (K) The San Diego Port Tenants Association.

29 (L) The Industrial Environmental Association.

30 (M) The San Diego Convention and Visitors Bureau.

31 (N) Scripps Institute of Oceanography.

32 (O) City of San Diego Metropolitan Wastewater Joint Powers  
33 Authority.

34 (P) The California Coastal Commission.

35 (2) The San Diego County Board of Supervisors may appoint  
36 two representatives to the committee. One of the persons  
37 appointed pursuant to this paragraph shall be a recreational boat  
38 owner who resides in San Diego County.

39 (3) The following entities may each appoint one nonvoting  
40 member to the committee:

1 (A) The United States Navy.

2 (B) The Department of Fish and Game.

3 (C) The United States Fish and Wildlife Service.

4 (D) The National Marine Fisheries Service.

5 (E) The University of California and California State  
6 University at San Diego may each appoint one nonvoting member.

7 (4) The San Diego Regional Water Quality Control Board is  
8 encouraged to participate in the proceedings of *the* committee.

9 (f) Committee members may not be compensated for their  
10 services or be reimbursed for any expenses incurred in the  
11 performance of their duties pursuant to this chapter.

12 (g) (1) Staffing for the committee shall be provided by the San  
13 Diego Unified Port District at the direction of the committee. The  
14 committee may accept grant funds and contract for professional  
15 services to carry out this chapter. The San Diego Unified Port  
16 District shall administer the grants made to the committee.

17 (2) Not more than 3 percent of the total amount of money  
18 received by the committee may be used to pay costs incurred in  
19 connection with the administration of the grants.

20 (h) The report required by subdivision (b) shall be submitted,  
21 on or before December 31, 2005, to all of the following:

22 (1) The Chairpersons of the Assembly Committee on Water,  
23 Parks and Wildlife, the Assembly Committee on Environmental  
24 Safety and Toxic Materials, the Senate Committee on  
25 Environmental Quality, and the Senate Committee on Agriculture  
26 and Water Resources.

27 (2) The San Diego Regional Water Quality Control Board.

28 (3) The state board.

29 (4) The California Coastal Commission.

30 SEC. 362. Section 13387 of the Water Code is amended to  
31 read:

32 13387. (a) Any person who knowingly or negligently does  
33 any of the following is subject to criminal penalties as provided in  
34 subdivisions (b), (c), and (d):

35 (1) Violates Section 13375 or 13376.

36 (2) Violates any waste discharge requirements or dredged or  
37 fill material permit issued pursuant to this chapter or any water  
38 quality certification issued pursuant to Section 13160.

1 (3) Violates any order or prohibition issued pursuant to Section  
2 13243 or 13301, if the activity subject to the order or prohibition  
3 is subject to regulation under this chapter.

4 (4) Violates any requirement of Section 301, 302, 306, 307,  
5 308, 318, 401, or 405 of the Clean Water Act (*33 U.S.C. Sec. 1311,*  
6 *1312, 1316, 1317, 1318, 1328, 1341, or 1345*), as amended.

7 (5) Introduces into a sewer system or into a publicly owned  
8 treatment works any pollutant or hazardous substances ~~which that~~  
9 the person knew or reasonably should have known could cause  
10 personal injury or property damage.

11 (6) Introduces any pollutant or hazardous substance into a  
12 sewer system or into a publicly owned treatment works, except in  
13 accordance with any applicable pretreatment requirements, which  
14 pollutant or hazardous substance causes the treatment works to  
15 violate waste discharge requirements.

16 (b) Any person who negligently commits any of the violations  
17 set forth in subdivision (a) shall, upon conviction, be punished by  
18 a fine of not less than five thousand dollars (\$5,000), nor more than  
19 twenty-five thousand dollars (\$25,000), for each day in which the  
20 violation occurs, or by imprisonment for not more than one year  
21 in ~~the~~ a county jail, or both. If a conviction of a person is for a  
22 violation committed after a first conviction of the person under this  
23 subdivision, subdivision (c), or subdivision (d), punishment shall  
24 be by a fine of not more than fifty thousand dollars (\$50,000) for  
25 each day in which the violation occurs, or by imprisonment of not  
26 more than two years, or by both.

27 (c) Any person who knowingly commits any of the violations  
28 set forth in subdivision (a) shall, upon conviction, be punished by  
29 a fine of not less than five thousand dollars (\$5,000), nor more than  
30 fifty thousand dollars (\$50,000), for each day in which the  
31 violation occurs, or by imprisonment in the state prison for not  
32 more than three years, or by both. If a conviction of a person is for  
33 a violation committed after a first conviction of the person under  
34 this subdivision or subdivision (d), punishment shall be by a fine  
35 of not more than one hundred thousand dollars (\$100,000) for each  
36 day in which the violation occurs, or by imprisonment in the state  
37 prison of not more than six years, or by both.

38 (d) (1) Any person who knowingly commits any of the  
39 violations set forth in subdivision (a), and who knows at the time  
40 that the person thereby places another person in imminent danger

1 of death or serious bodily injury, shall, upon conviction, be subject  
2 to a fine of not more than two hundred fifty thousand dollars  
3 (\$250,000) or imprisonment in the state prison of not more than  
4 15 years, or both. A person ~~which~~ *that* is an organization shall,  
5 upon conviction under this subdivision, be subject to a fine of not  
6 more than one million dollars (\$1,000,000). If a conviction of a  
7 person is for a violation committed after a first conviction of the  
8 person under this subdivision, the maximum punishment shall be  
9 a fine of not more than five hundred thousand dollars (\$500,000)  
10 or imprisonment in the state prison of not more than 30 years, or  
11 both. A person ~~which~~ *that* is an organization shall, upon conviction  
12 for a violation committed after a first conviction of the person  
13 under this subdivision, be subject to a fine of not more than two  
14 million dollars (\$2,000,000). Any fines imposed pursuant to this  
15 subdivision shall be in addition to any fines imposed pursuant to  
16 subdivision (c).

17 (2) In determining whether a defendant who is an individual  
18 knew that the defendant's conduct placed another person in  
19 imminent danger of death or serious bodily injury, the defendant  
20 is responsible only for actual awareness or actual belief that the  
21 defendant possessed, and knowledge possessed by a person other  
22 than the defendant, but not by the defendant personally, cannot be  
23 attributed to the defendant.

24 (e) Any person who knowingly makes any false statement,  
25 representation, or certification in any record, report, plan, notice  
26 to comply, or other document filed with a regional board or the  
27 state board, or who knowingly falsifies, tampers with, or renders  
28 inaccurate any monitoring device or method required under this  
29 division shall be punished by a fine of not more than twenty-five  
30 thousand dollars (\$25,000), or by imprisonment in the state prison  
31 for not more than two years, or by both. If a conviction of a person  
32 is for a violation committed after a first conviction of the person  
33 under this subdivision, punishment shall be by a fine of not more  
34 than twenty-five thousand dollars (\$25,000) per day of violation,  
35 or by imprisonment in the state prison of not more than four years,  
36 or by both.

37 (f) For purposes of this section, a single operational upset  
38 which leads to simultaneous violations of more than one pollutant  
39 parameter shall be treated as a single violation.



(g) For purposes of this section, “organization,” “serious bodily injury,” “person,” and “hazardous substance” shall have the same meaning as in Section 309(c) of the Clean Water Act (33 U.S.C. Sec. 1319(c)), as amended.

(h) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, fines collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (4) of subdivision (a) shall be deposited in the Water Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, *in* cleaning up or abating the effects of the waste on waters of the state, or for the purposes authorized in Section 13443.

SEC. 363. Section 13610 of the Water Code is amended to read:

13610. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this chapter:

(a) “Perchlorate” means all perchlorate-containing compounds, including ammonium, potassium, magnesium, and sodium perchlorate not found on or after January 1, 2004, in unused military munitions as defined in Section 260.10 of Title 40 of the Code of Federal Regulations.

(b) Subject to Section 13610.5, “perchlorate storage facility” means a facility, not including a military munitions storage facility within a military installation that meets the Department of Defense Explosive Safety Board requirements set forth in ~~DOD 605.9-STD~~ 6055.9-STD, that stores over 500 pounds of perchlorate in any calendar year.

(c) For the purposes of this section, “military munitions storage facility” does not include the entire military installation within which the military munitions storage facility is located.

SEC. 364. Section 13611 of the Water Code is amended to read:

1 13611. (a) The notification required by Section 13611.5 does  
2 not apply to a discharge that is in compliance with this division, or  
3 to a water agency conveying water in compliance with all state and  
4 federal drinking water standards.

5 (b) Any person who fails to provide the notifications required  
6 by Section 13271 relating to perchlorate or by Section 13611.5  
7 may be civilly liable in accordance with subdivision (c).

8 (c) (1) Civil liability may be administratively imposed by a  
9 regional board in accordance with Article 2.5 (commencing with  
10 Section 13323) of Chapter 5 for a violation described in  
11 subdivision (b) in an amount that does not exceed one thousand  
12 dollars (\$1,000) for each day in which the violation occurs.

13 (2) Civil liability may be imposed by the superior court in  
14 accordance with Article 5 (commencing with Section 11350) and  
15 Article 6 (commencing with Section 13360) of Chapter 5 for a  
16 violation described in subdivision (b) in an amount that is not less  
17 than five hundred dollars (\$500), or more than five thousand  
18 dollars (\$5,000), for each day in which the violation occurs.

19 (d) Notwithstanding Section ~~13341~~ 13441, all money collected  
20 by the state pursuant to this section shall be available to the state  
21 board upon appropriation by the Legislature.

22 SEC. 365. Section 13611.5 of the Water Code is amended to  
23 read:

24 13611.5. (a) On or before January 1, 2005, and annually  
25 thereafter, unless the owner or operator has met the alternative  
26 compliance requirements of subdivision (b), an owner or operator  
27 of a storage facility that has stored in any calendar year since  
28 January 1, 1950, over 500 pounds of perchlorate shall submit to the  
29 state board, to the extent feasible, all of the following information:

30 (1) The volume of perchlorate stored each year.

31 (2) The method of storage.

32 (3) The location of storage. To the extent authorized by federal  
33 law, in the case of a perchlorate storage facility under the control  
34 of the Armed Forces of the United States, "location" means the  
35 name and address of the property within which the perchlorate  
36 storage facility is located.

37 (4) Copies of documents relating to any monitoring undertaken  
38 for potential leaks into the water bodies of the state.

39 (b) The owner or operator of a storage facility that has stored  
40 in any calendar year since January 1, 1950, over 500 pounds of

perchlorate, is in compliance with this section if both of the following conditions are met:

(1) The owner or operator has provided substantially similar information as required pursuant to subdivision (a) to a state, local, or federal agency pursuant to any of the following:

~~(i)~~

(A) An order issued by a regional board pursuant to Chapter 5 (commencing with Section 13300) of Division 7.

~~(ii)~~

(B) An order, consent order, or consent decree issued or entered into by the Department of Toxic Substances Control pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

~~(iii)~~

(C) An ~~an~~ order, consent order, or consent decree issued or entered into by the United States Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

~~(iv)~~

(D) The requirement under Section 25504.1 of the Health and Safety Code, as added by Assembly Bill 826 of the 2003–04 Regular Session.

(2) The owner or operator, on or before January 1, 2005, and annually thereafter, notifies the state board of the governmental entity to which the information is provided and the state board determines the information supplied is substantially similar as the information required to be reported pursuant to subdivision (a). In the case of any information submitted to a federal or local agency, the state board may require the owner or operator, in addition, to submit that information to the state board if the state board determines that the information is not otherwise reasonably available to the state board.

(c) This section shall not be administered or implemented if the state board receives notification from the Secretary for Environmental Protection pursuant to Section 13613 that the Secretary for Environmental Protection has established a database that is able to receive perchlorate inventory information.



(d) Information on perchlorate storage need only be submitted pursuant to this section one time, unless information originally submitted pursuant to this section has changed.

SEC. 366. Section 36153 of the Water Code is amended to read:

36153. In addition to any and all other provisions of this division and any other applicable laws for the issuance of general obligation bonds by a district, general obligation bonds may be issued by a district ~~where~~ *if* the proceeds are to be used to construct facilities in compliance with an order adopted by the State Department of Health Services pursuant to Chapter 4 ~~commencing~~ *(commencing* with Section 116275) of Part 12 of Division 104 of the Health and Safety Code. Bonds issued pursuant to this section shall be issued by a district as otherwise provided in this division without regard to the election procedures of Chapter 3 (commencing with Section 35150) of Part 4 and shall be secured by unlimited ad valorem assessments on land in the district without regard to any limitations set forth in Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of the Revenue and Taxation Code. If 50 percent or more of the voters within the district or if the owners of 50 percent or more of the assessed valuation within the district submit written protests to the district secretary within the 30 days after the date the board adopts the resolution authorizing the issuance of the bonds, the proceedings for the issuance of bonds pursuant to this section shall be terminated and no further proceedings shall be taken pursuant to this section for a period of at least one year.

SEC. 367. Section 72303 of the Water Code is amended to read:

72303. Any district ~~whose~~, *the* territory, or any portion thereof, *of which* is included within a metropolitan water district, shall be entitled, without penalty or sanction from the metropolitan water district, to purchase or acquire water to serve any territory within the district, whether or not ~~such~~ *the* territory is within the metropolitan water district, from the following specified sources without ~~such~~ *the* water being deemed an acquisition or purchase of water from the State Water Resources development system:

(a) Recycled water, as defined in Section 13050, regardless of the source of ~~such~~ *the* water prior to its use and recycling.

(b) Water produced ~~incidentally~~ *incidentally* to the exercise of bona fide property rights to divert or pump local waters, regardless of the origin of ~~such~~ *the* waters.

SEC. 368. Section 78688 of the Water Code is amended to read:

78688. Nothing in this division diminishes, or otherwise affects, the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et ~~seq.~~) *seq.*).

SEC. 369. Section 79532 of the Water Code is amended to read:

79532. (a) Funds made available pursuant to subdivision (b) of Section 79530 shall be administered in accordance with this section.

(b) (1) Grant funds appropriated for the purposes of subdivision (b) of Section 79530 shall be awarded on a competitive basis.

(2) The department shall consolidate the application process required to implement the grant program described in this section.

(c) For the purposes of this chapter, ~~“Southern”~~ *“southern”* California water agencies” means water agencies ~~whose~~ *with* service ~~area is~~ *areas* entirely or partly in one or more of the following counties: San Diego, Imperial, Riverside, Orange, Los Angeles, San Bernardino, Santa Barbara, or Ventura.

(d) Grants may be awarded to ~~Southern~~ *southern* California water agencies for eligible projects undertaken by one or more ~~Southern~~ *southern* California water agencies and other entities.

(e) A project funded by a grant made pursuant to subdivision (b) of Section 79530 shall meet both of the following requirements:

(1) The project will assist the grantee to meet safe drinking water standards.

(2) The project will assist in meeting the state’s commitment to reduce Colorado River water use to 4.4 million acre-feet per year.

(f) In the development of criteria for the grants awarded pursuant to this section, the State Department of Health Services shall consult with the Office of Environmental Health Hazard Assessment for the purposes of developing a program that gives priority to projects that reduce public and environmental exposure

1 to contaminants that pose the most significant health risks, and that  
2 will bring water systems into compliance with safe drinking water  
3 standards. These include, but are not limited to, projects that  
4 address public exposure to contaminants for which safe drinking  
5 water standards have been established, including arsenic,  
6 disinfection byproducts and uranium. Projects to address  
7 emerging contaminants, including perchlorate, chromium 6, and  
8 endocrine disrupters shall also be given priority.

9 SEC. 370. Section 79561.5 of the Water Code is amended to  
10 read:

11 79561.5. (a) Notwithstanding any other provision of law, of  
12 the funds appropriated to the department for the purposes of  
13 ~~Section Sections~~ 79560 and 79560.1, the department shall allocate  
14 the sum of not less than twenty million dollars (\$20,000,000) to  
15 competitive grants for groundwater management and recharge  
16 projects. The department shall not allocate funds pursuant to this  
17 section unless it determines that the allocation is consistent with  
18 this division, as approved by the voters at the November 5, 2002,  
19 statewide general election.

20 (b) It is the intent of the Legislature that these funds be used to  
21 enhance water supply in rapidly growing areas of this state with  
22 limited access to imported water supplies.

23 (c) Not more than 50 percent of the grants pursuant to this  
24 section shall be for projects in northern California. For projects in  
25 southern California, the department shall give preference to  
26 projects outside the service area of the Metropolitan Water District  
27 of Southern California that are infill projects within one mile of  
28 established residential and commercial development.

29 (d) As used in this section, the term “rapidly growing areas”  
30 means counties located in southern California where the county  
31 population increased by 2.4 percent or more between January 1,  
32 2002, and January 1, 2003.

33 SEC. 371. Section 779 of the Welfare and Institutions Code  
34 is amended to read:

35 779. The court committing a ward to the Youth Authority may  
36 thereafter change, modify, or set aside the order of commitment.  
37 Ten days’ notice of the hearing of the application therefor shall be  
38 served by United States mail upon the Director of the Youth  
39 Authority. In changing, modifying, or setting aside the order of  
40 commitment, the court shall give due consideration to the effect

thereof upon the discipline and parole system of the Youth Authority or of the correctional school in which the ward may have been placed by the Youth Authority. Except as *provided* in this section—~~provided~~, nothing in this chapter shall be deemed to interfere with the system of parole and discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole and discharge of wards of the juvenile court committed to the Youth Authority, or with the management of any school, institution, or facility under the jurisdiction of the Youth Authority. Except as provided in this section, this chapter does not interfere with the system of transfer between institutions and facilities under the jurisdiction of the Youth Authority. This section does not limit the authority of the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734.

However, before any inmate of a correctional school may be transferred to a state hospital, he or she shall first be returned to a court of competent jurisdiction and, after hearing, may be committed to a state hospital for the insane in accordance with law.

SEC. 372. Section 1000.7 of the Welfare and Institutions Code is amended to read:

1000.7. As used in this chapter, “~~Youth Authority~~” ~~“authority”~~ “Authority,” “*authority*,” and “the authority” mean and refer to the Department of the Youth Authority, and “board” means and refers to the Youth Authority Board.

SEC. 373. Section 1703 of the Welfare and Institutions Code is amended to read:

1703. As used in this chapter *the following terms have the following meanings:*

(a) “Public offenses” means public offenses as that term is defined in the Penal Code;.

(b) “Court” includes any official authorized to impose sentence for a public offense;.

(c) ~~“Youth Authority,” “Authority,” “authority”~~ “Authority,” “*Authority*,” “*authority*,” or “department” means the Department of the Youth Authority;.

(d) “Board” or “board” means the Youth Authority Board.

(e) The masculine pronoun includes the feminine.

1 SEC. 374. Section 5657 of the Welfare and Institutions Code  
2 is amended to read:

3 5657. (a) The private organization or private nonprofit  
4 organization awarded a contract with the county agency to supply  
5 mental health services under this part shall provide an invoice to  
6 the county for the amount of the payment due within 60 days of the  
7 date the services are supplied, as long as that date is at least 60 days  
8 from the date the county has received distribution of mental health  
9 funds from the state.

10 (b) Any county ~~which~~ *that*, without reasonable cause, fails to  
11 make any payment within 60 days of the required payment date to  
12 a private organization or private nonprofit organization awarded  
13 a contract with the county agency to supply mental health services  
14 under this part, for an ~~indisputed~~ *undisputed* claim which was  
15 properly executed by the claimant and submitted to the county,  
16 shall pay a penalty of 0.10 percent of the amount due, per day, from  
17 the 61st day after the required payment date.

18 (c) For the purposes of this section, “required payment date”  
19 means any of the following:

20 (1) The date on which payment is due under the terms of the  
21 contract.

22 (2) If a specific date is not established by contract, the date upon  
23 which an invoice is received, if the invoice specifies payment is  
24 due upon receipt.

25 (3) If a specific date is not established by contract or invoice,  
26 60 days after receipt of a proper invoice for the amount of the  
27 payment due.

28 (d) The penalty assessed under this section shall not be paid  
29 from the Bronzan-McCorquodale program funds or county  
30 matching funds. The penalty provisions of this section shall not  
31 apply to the late payment of any federal funds or Medi-Cal funds.

32 SEC. 375. Section 7200.06 of the Welfare and Institutions  
33 Code is amended to read:

34 7200.06. (a) Of the 1,362 licensed beds at Napa State  
35 Hospital, at least 20 percent of these beds shall be available in any  
36 given fiscal year for use by counties for contracted services. Of the  
37 remaining beds, in no case shall the population of patients whose  
38 placement has been required pursuant to the Penal Code, exceed  
39 980.



(b) After construction of the perimeter security fence is completed at Napa State Hospital, no patient whose placement has been required pursuant to the Penal Code shall be placed outside the perimeter security fences, with the exception of placements in the General Acute Care and Skilled Nursing Units. The State Department of Mental Health shall ensure that appropriate security measures are in place for the general acute care and skilled nursing units.

(c) Any alteration to the security perimeter structure or policies ~~will~~ shall be made in conjunction with representatives of the City of Napa, the County of Napa, and local law enforcement agencies.

SEC. 376. Section 10063 of the Welfare and Institutions Code is amended to read:

10063. (a) Notwithstanding any other provision of law, the name of the program provided for pursuant to Chapter 2 (commencing with Section 11200) is hereby changed to the California Work Opportunity and Responsibility to Kids program, referred to as CalWORKs.

(b) Any reference to the Aid to Families with Dependent Children ~~program~~ Program, Family Group and Unemployment program, and the Greater Avenues for Independence program shall be deemed to refer to the CalWORKs program.

SEC. 377. Section 11025 of the Welfare and Institutions Code is amended to read:

11025. (a) The State Department of Social Services and the State Department of Health Services shall utilize the records of the Franchise Tax Board to match unearned income against reported income of applicants for and recipients of aid or public social services under this division. The matching information shall then be forwarded to the appropriate county welfare department for use in determining the eligibility of, and proper grant amount for, applicants for, and recipients of, aid or public social services under this division. Any and all documents and records ~~which~~ that result from the matching of records with the Franchise Tax Board shall be subject to the confidentiality requirements of Section 10850.

(b) This section shall not be construed to supersede the requirements and protections in the California Right to Financial Privacy Act under Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code in obtaining information in possession of any financial institution.

1 (c) This section shall be implemented only to the extent ~~is it~~ is  
2 funded in the annual Budget Act.

3 SEC. 378. Section 11052.5 of the Welfare and Institutions  
4 Code is amended to read:

5 11052.5. No applicant shall be granted public assistance  
6 under Chapters 2 (commencing with Section 11200) and 5  
7 (commencing with Section 13000) of this part until he *or she* is  
8 first personally interviewed by the office of the county department  
9 or state staff for patients in state hospitals. ~~Such~~ The personal  
10 interview shall be conducted promptly following the application  
11 for assistance. If an applicant is incapable of acting in his *or her*  
12 own behalf, the county department shall verify this fact by  
13 personal contact with the applicant before aid is authorized. As  
14 used in this section, the term public assistance does not include  
15 health care as provided by Chapter 7 (commencing with Section  
16 14000) ~~of this part~~.

17 The interview conducted pursuant to this section shall occur  
18 within seven days after the time of application unless there are  
19 extenuating circumstances ~~which~~ that justify further delay.

20 SEC. 379. Section 11373 of the Welfare and Institutions Code  
21 is amended to read:

22 11373. Two years after the implementation date of this article,  
23 and again five years after the implementation date of this article,  
24 the department shall report to the Legislature information on the  
25 outcomes of the Kin-GAP Program, with the report to include all  
26 of the following:

27 (a) The number and characteristics of the children who exited  
28 the child welfare system to the Kin-GAP Program.

29 ~~(2)~~

30 (b) The numbers and types of disruptions to the Kin-GAP  
31 Program, including subsequent substantiated child abuse reports,  
32 child welfare services, and cases where children return to foster  
33 care.

34 ~~(3)~~

35 (c) Rates of Kin-GAP exits from foster care compared to  
36 relative adoption and return to parents.

37 SEC. 380. Section 11468.6 of the Welfare and Institutions  
38 Code is amended to read:

39 11468.6. (a) The director shall establish administrative  
40 procedures to review group home audit findings.



1 (b) A group home provider, including an RCL 13 or an RCL 14  
2 provider, may request a hearing to examine any disputed audit  
3 finding that results in an overpayment or adjustment to the  
4 provider's rate, or that reduces the provider's overall RCL point  
5 total pursuant to Section 11462. The administrative review process  
6 established in this section shall not examine issues regarding the  
7 authority of the department to set rates, determine RCL points,  
8 conduct audits, or collect overpayments from a group home  
9 provider.

10 (c) The administrative appeal process established pursuant to  
11 this section shall commence with an informal hearing, and provide  
12 for a formal administrative hearing of the informal level appeal  
13 record and decision by a hearing officer appointed by the director.  
14 The department shall make every effort to contract with the State  
15 Department of Health Services to conduct the informal hearings  
16 required by this subdivision during the first year of  
17 implementation of this section.

18 (d) An amended audit report may be issued by the department  
19 for the fiscal period or periods for which the proceedings are  
20 pending under this section, if at the time of the hearing, the group  
21 home provider submits additional documentation or evidence that  
22 was not available to the department at the time of the audit. The  
23 proceedings shall be suspended for a period not exceeding 120  
24 days while the department completes an amended audit and the  
25 provider identifies any additional disputes that result from an  
26 amended audit report. Additional audit findings included in an  
27 amended audit report may also be included in the proceedings at  
28 the request of the provider.

29 (e) Within 120 days after submission of a proposed decision,  
30 the director shall do one of the following:

31 (1) Adopt the proposed decision with or without reading or  
32 hearing the record.

33 (2) Reject the proposed decision and adopt an alternative  
34 decision based upon the documentary and electronically recorded  
35 record, with or without taking additional evidence.

36 (3) Refer the matter to the same or a different hearing officer  
37 to take additional evidence. If the case is so assigned, the hearing  
38 officer shall, within 90 days, prepare a proposed decision, based  
39 upon the additional evidence and the documentary and  
40 electronically recorded record of the prior hearing. The director

1 may then take one of the actions described in this subdivision in  
2 regard to the new proposed decision. The director may return a  
3 proposed decision twice on the same appeal.

4 (f) (1) The director's decision shall be final when the decision  
5 is mailed to the parties. However, the director retains jurisdiction  
6 to correct clerical errors.

7 (2) Copies of the final decision of the director and the hearing  
8 officer's proposed decision, if it was not adopted by the director,  
9 shall be mailed by certified mail to the parties.

10 (g) The group home provider may request review of the final  
11 decision of the director pursuant to this section in accordance with  
12 Section 1094.5 of the Code of Civil ~~Procedures~~ *Procedure* within  
13 six months of the issuance of the director's final decision.

14 SEC. 381. Section 14016.5 of the Welfare and Institutions  
15 Code is amended to read:

16 14016.5. (a) At the time of determining or redetermining the  
17 eligibility of a Medi-Cal or aid to families with dependent children  
18 (AFDC) applicant or beneficiary who resides in an area served by  
19 a managed health care plan or pilot program in which beneficiaries  
20 may enroll, each applicant or beneficiary shall personally attend  
21 a presentation at which the applicant or beneficiary is informed of  
22 the managed care and fee-for-service options available regarding  
23 methods of receiving Medi-Cal benefits. The county shall ensure  
24 that each beneficiary or applicant attends this presentation.

25 (b) The health care options presentation described in  
26 subdivision (a) shall include all of the following elements:

27 (1) Each beneficiary or eligible applicant shall be informed that  
28 he or she may choose to continue an established patient-provider  
29 relationship in the fee-for-service sector.

30 (2) Each beneficiary or eligible applicant shall be provided  
31 with the name, address, telephone number, and specialty, if any, of  
32 each primary care provider, and each clinic participating in each  
33 prepaid managed health care plan, pilot project, or fee-for-service  
34 case management provider option. This information shall be  
35 provided under geographic area designations, in alphabetical  
36 order by the name of the primary care provider and clinic. The  
37 name, address, and telephone number of each specialist  
38 participating in each prepaid managed care health plan, pilot  
39 project, or fee-for-service case management provider option shall  
40 be made available by either contacting the health care options

1 contractor or the prepaid managed care health plan, pilot project,  
2 or fee-for-service case management provider.

3 (3) Each beneficiary or eligible applicant shall be informed that  
4 he or she may choose to continue an established patient-provider  
5 relationship in a managed care option, if his or her treating  
6 provider is a primary care provider or clinic contracting with any  
7 of the prepaid managed health care plans, pilot projects, or  
8 fee-for-service case management provider options available, has  
9 available capacity, and agrees to continue to treat that beneficiary  
10 or applicant.

11 (4) In areas specified by the director, each beneficiary or  
12 eligible applicant shall be informed that if he or she fails to make  
13 a choice, or does not certify that he or she has an established  
14 relationship with a primary care provider or clinic, he or she shall  
15 be assigned to, and enrolled in, a prepaid managed health care plan,  
16 pilot projects, or fee-for-service case management provider.

17 (c) No later than 30 days following the date a Medi-Cal or  
18 AFDC beneficiary or applicant is determined eligible, the  
19 beneficiary or applicant shall indicate his or her choice in writing,  
20 as a condition of coverage for Medi-Cal benefits, of either of the  
21 following health care options:

22 (1) To obtain benefits by receiving a Medi-Cal card, which may  
23 be used to obtain services from individual providers, that the  
24 beneficiary would locate, who choose to provide services to  
25 Medi-Cal beneficiaries.

26 The department may require each beneficiary or eligible  
27 applicant, as a condition for electing this option, to sign a statement  
28 certifying that he or she has an established patient-provider  
29 relationship, or in the case of a dependent, the parent or guardian  
30 shall make that certification. This certification shall not require the  
31 acknowledgment or guarantee of acceptance, by any indicated  
32 Medi-Cal provider or health facility, of any beneficiary making a  
33 certification under this section.

34 (2) (A) To obtain benefits by enrolling in a prepaid managed  
35 health care plan, pilot program, or fee-for-service case  
36 management provider that has agreed to make Medi-Cal services  
37 readily available to enrolled Medi-Cal beneficiaries.

38 (B) At the time the beneficiary or eligible applicant selects a  
39 prepaid managed health care plan, pilot project, or fee-for-service  
40 case management provider, the department shall, when applicable,

1 encourage the beneficiary or eligible applicant to also indicate, in  
2 writing, his or her choice of primary care provider or clinic  
3 contracting with the selected prepaid managed health care plan,  
4 pilot project, or fee-for-service case management provider.

5 (d) (1) In areas specified by the director, a Medi-Cal or AFDC  
6 beneficiary or eligible applicant who does not make a choice, or  
7 who does not certify that he or she has an established relationship  
8 with a primary care provider or clinic, shall be assigned to and  
9 enrolled in an appropriate Medi-Cal managed care plan, pilot  
10 project, or fee-for-service case management provider providing  
11 service within the area in which the beneficiary resides.

12 (2) If it is not possible to enroll the beneficiary under a  
13 Medi-Cal managed care plan or pilot project or a fee-for-service  
14 case management provider because of a lack of capacity or  
15 availability of participating contractors, the beneficiary shall be  
16 provided with a Medi-Cal card and informed about fee-for-service  
17 primary care providers who do all of the following:

18 (A) The providers agree to accept Medi-Cal patients.

19 (B) The providers provide information about the provider's  
20 willingness to accept Medi-Cal patients as described in Section  
21 14016.6.

22 (C) The providers provide services within the area in which the  
23 beneficiary resides.

24 (e) If a beneficiary or eligible applicant does not choose a  
25 primary care provider or clinic or does not select any primary care  
26 provider who is available, the managed health care plan, pilot  
27 project, or fee-for-service case management provider that was  
28 selected by or assigned to the beneficiary shall ensure that the  
29 beneficiary selects a primary care provider or clinic within 30 days  
30 after enrollment or is assigned to a primary care provider within  
31 40 days after enrollment.

32 (f) (1) The managed care plan shall have a valid Medi-Cal  
33 contract, adequate capacity, and appropriate staffing to provide  
34 health care services to the beneficiary.

35 (2) The department shall establish standards for all of the  
36 following:

37 (A) The maximum distances a beneficiary is required to travel  
38 to obtain primary care services from the managed care plan,  
39 fee-for-service managed care provider, or pilot project in which  
40 the beneficiary is enrolled.

1 (B) The conditions under which a primary care service site  
2 shall be accessible by public transportation.

3 (C) The conditions under which a managed care plan,  
4 fee-for-service managed care provider, or pilot project shall  
5 provide nonmedical transportation to a primary care service site.

6 (3) In developing the standards required by paragraph (2), the  
7 department shall take into account, on a geographic basis, the  
8 means of transportation used and distances typically traveled by  
9 Medi-Cal beneficiaries to obtain fee-for-service primary care  
10 services and the experience of managed care plans in delivering  
11 services to Medi-Cal enrollees. The department shall also consider  
12 the provider's ability to render culturally and linguistically  
13 appropriate services.

14 (g) To the extent possible, the arrangements for carrying out  
15 subdivision (d) shall provide for the equitable distribution of  
16 Medi-Cal beneficiaries among participating managed care plans,  
17 fee-for-service case management providers, and pilot projects.

18 (h) If, under the provisions of subdivision (d), a Medi-Cal  
19 beneficiary or applicant does not make a choice or does not certify  
20 that he or she has an established relationship with a primary care  
21 provider or clinic, the person may, at the option of the department,  
22 be provided with a Medi-Cal card or be assigned to and enrolled  
23 in a managed care plan providing service within the area in which  
24 the beneficiary resides.

25 (i) Any Medi-Cal or AFDC beneficiary who is dissatisfied with  
26 the provider or managed care plan, pilot project, or fee-for-service  
27 case management provider shall be allowed to select or be assigned  
28 to another provider or managed care plan, pilot project, or  
29 fee-for-service case management provider.

30 (j) The department or its contractor shall notify a managed care  
31 plan, pilot project, or fee-for-service case management provider  
32 when it has been selected by or assigned to a beneficiary. The  
33 managed care plan, pilot project, or fee-for-service case  
34 management provider that has been selected by, or assigned to, a  
35 beneficiary, shall notify the primary care provider or clinic ~~than~~  
36 *that* it has been selected or assigned. The managed care plan, pilot  
37 project, or fee-for-service case management provider shall also  
38 notify the beneficiary of the managed care plan, pilot project, or  
39 fee-for-service case management provider or clinic selected or  
40 assigned.

(k) (1) The department shall ensure that Medi-Cal beneficiaries eligible under Title XVI of the Social Security Act are provided with information about options available regarding methods of receiving Medi-Cal benefits as described in subdivision (c).

(2) (A) The director may waive the requirements of subdivisions (c) and (d) until a means is established to directly provide the presentation described in subdivision (a) to beneficiaries who are eligible for the federal Supplemental Security Income for the Aged, Blind, and Disabled Program (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code).

(B) The director may elect not to apply the requirements of subdivisions (c) and (d) to beneficiaries whose eligibility under the Supplemental Security Income program is established before January 1, 1994.

(l) In areas where there is no prepaid managed health care plan or pilot program ~~which~~ *that* has contracted with the department to provide services to Medi-Cal beneficiaries, and where no other enrollment requirements have been established by the department, no explicit choice need be made, and the beneficiary or eligible applicant shall receive a Medi-Cal card.

(m) The following definitions contained in this subdivision shall control the construction of this section, unless the context requires otherwise:

(1) “Applicant,” “beneficiary,” and “eligible applicant,” in the case of a family group, ~~means~~ *mean* any person with legal authority to make a choice on behalf of dependent family members.

(2) “Fee-for-service case management provider” means a provider enrolled and certified to participate in the Medi-Cal fee-for-service case management program the department may elect to develop in selected areas of the state with the assistance of and in cooperation with California physician providers and other interested provider groups.

(3) “Managed health care plan” and “managed care plan” mean a person or entity operating under a Medi-Cal contract with the department under this chapter or Chapter 8 (commencing with Section 14200) to provide, or arrange for, health care services for Medi-Cal beneficiaries as an alternative to the Medi-Cal

1 fee-for-service program that has a contractual responsibility to  
2 manage health care provided to Medi-Cal beneficiaries covered by  
3 the contract.

4 (n) (1) Whenever a county welfare department notifies a  
5 public assistance recipient or Medi-Cal beneficiary that the  
6 recipient or beneficiary is losing Medi-Cal eligibility, the county  
7 shall include, in the notice to the recipient or beneficiary,  
8 notification that the loss of eligibility shall also result in the  
9 recipient's or beneficiary's disenrollment from Medi-Cal  
10 managed care health or dental plans, if enrolled.

11 (2) (A) Whenever the department or the county welfare  
12 department processes a change in a public assistance recipient's or  
13 Medi-Cal beneficiary's residence or aid code that will result in the  
14 recipient's or beneficiary's disenrollment from the managed care  
15 health or dental plan in which ~~they are~~ *he or she is* currently  
16 enrolled, a written notice shall be given to the recipient or  
17 beneficiary.

18 (B) This paragraph shall become operative and the department  
19 shall commence sending the notices required under this paragraph  
20 on or before the expiration of 12 months after the effective date of  
21 this section.

22 (o) This section shall be implemented in a manner consistent  
23 with any federal waiver required to be obtained by the department  
24 in order to implement this section.

25 SEC. 382. Section 14043.75 of the Welfare and Institutions  
26 Code is amended to read:

27 14043.75. (a) The director may, in consultation with  
28 interested parties, by regulation, adopt, readopt, repeal, or amend  
29 additional measures to prevent or curtail fraud and abuse.  
30 Regulations adopted, readopted, repealed, or amended pursuant to  
31 this section shall be deemed emergency regulations in accordance  
32 with the Administrative Procedure Act (Chapter 3.5 (commencing  
33 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
34 Government Code). These emergency regulations shall be deemed  
35 necessary for the immediate preservation of the public peace,  
36 health and safety, or general welfare. Emergency regulations  
37 adopted, amended, or repealed pursuant to this section shall be  
38 exempt from review by the Office of Administrative Law. The  
39 emergency regulations authorized by this section shall be  
40 submitted to the Office of Administrative Law for filing with the



1 Secretary of State and publication in the California Code of  
2 Regulations.

3 (b) Notwithstanding any other provision of law, the director  
4 may, without taking regulatory action pursuant to Chapter 3.5  
5 (commencing with Section 11340) of Part 1 of Division 3 of Title  
6 2 of the Government Code, implement, interpret, or make specific  
7 Sections 14043.15, 14043.26, 14043.27, 14043.28, 14043.29, and  
8 14043.341 by means of a provider bulletin or similar instruction.  
9 The department shall notify and consult with interested parties and  
10 appropriate stakeholders in implementing, interpreting, or making  
11 specific those provisions described in this subdivision, including  
12 all of the following:

13 (1) Notifying provider representatives of the proposed action  
14 or change. The notice shall occur at least 10 business days prior to  
15 the meeting provided for in paragraph (2).

16 (2) Scheduling at least one meeting with interested parties and  
17 appropriate stakeholders to discuss the action or change.

18 (3) Allowing for written input regarding the action or change.

19 (4) Providing at least 30 ~~days~~ *days'* advance notice of the  
20 effective date of the action or change.

21 SEC. 383. Section 14087.6 of the Welfare and Institutions  
22 Code is amended to read:

23 14087.6. A county that has contracted for the provision of  
24 services pursuant to this article may provide the services directly  
25 to recipients, or arrange for any or all of the services to be provided  
26 by subcontracting with primary care providers, health  
27 maintenance organizations, insurance carriers, or other entities or  
28 individuals. The subcontracts may utilize a prospectively  
29 negotiated reimbursement rate, fee-for-service, retainer,  
30 capitation, or other basis for payment. The rate of payment  
31 established under the contract shall not exceed the total per capita  
32 amount that the department estimates would be payable for all  
33 services and requirements covered under the contract if all these  
34 services and requirements were to be furnished Medi-Cal  
35 beneficiaries under the Medi-Cal fee-for-service program.

36 Counties that are responsible for providing health care under  
37 this chapter shall make efforts to utilize existing health service  
38 resources ~~where~~ *if* these resources can be estimated by the county  
39 to result in lower total long-term costs and ~~accessibility~~ *accessible*  
40 quality care to persons served under this chapter. The granting of

1 a certificate of need pursuant to the criteria set forth in Section  
2 127200 of the Health and Safety Code or a certificate of exemption  
3 pursuant to the criteria set forth in Section 127175 of the Health  
4 and Safety Code shall satisfy the intent of this provision.

5 SEC. 384. Section 14105.981 of the Welfare and Institutions  
6 Code is amended to read:

7 14105.981. (a) Prior to the implementation of the Health  
8 Insurance Act of 2003, annually for five years after its  
9 implementation, and every five years thereafter, the department  
10 shall report to the Legislature and the Managed Risk Medical  
11 Insurance Board regarding utilization patterns for Medi-Cal  
12 pursuant to ~~Chapter 7 (commencing with Section 14000) of Part~~  
13 ~~3 of Division 6~~ *this chapter* at county-owned hospitals and clinics,  
14 community clinics, and vital institutional safety net providers  
15 eligible for Medi-Cal payments under Section 14105.98,  
16 including determining the number of Medi-Cal inpatient days and  
17 outpatient visits as well as the nature and cost of care provided to  
18 Medi-Cal patients.

19 (b) If Medi-Cal fee-for-service utilization or Medi-Cal  
20 fee-for-service payments to county-owned hospitals and clinics,  
21 community clinics, and other vital institutional safety net  
22 providers eligible for Medi-Cal payments under Section 14105.98  
23 have been reduced, then the department shall review statute,  
24 regulations, policies and procedures, payment arrangements or  
25 other mechanisms to determine what changes may be necessary to  
26 protect Medi-Cal funding and maximize federal financial  
27 participation to protect the financial stability of county-owned  
28 hospitals and clinics, community clinics, and other vital  
29 institutional safety net providers. The department shall consult  
30 with representatives of county-owned hospital systems,  
31 community clinics, vital institutional safety net providers eligible  
32 for Medi-Cal payments under Section 14105.98, legal services  
33 advocates, and recognized collective bargaining agents for the  
34 specified providers.

35 SEC. 385. Section 14123.25 of the Welfare and Institutions  
36 Code is amended to read:

37 14123.25. (a) In lieu of, or in addition to, the imposition of  
38 any other sanction available to it, including the sanctions and  
39 penalties authorized under Section 14123.2 or 14171.6, and as the  
40 “single state agency” for California vested with authority to

1 administer the Medi-Cal program, the department shall exercise  
2 the authority granted to it in Section 1002.2 of Title 42 of the Code  
3 of Federal Regulations, and may also impose the mandatory and  
4 permissive exclusions identified in Section 1128 of the federal  
5 Social Security Act (42 U.S.C. Sec. 1320a-7), and its  
6 implementing regulations, and impose civil penalties identified in  
7 Section 1128A of the federal Social Security Act (42 U.S.C. Sec.  
8 1320a-7a), and its implementing regulations, against applicants  
9 and providers, as defined in Section 14043.1, or against billing  
10 agents, as defined in Section 14040.1. The department may also  
11 terminate, or refuse to enter into, a provider agreement authorized  
12 under Section 14043.2 with an applicant or provider, as defined in  
13 Section 14043.1, upon the grounds specified in Section 1866(b)(2)  
14 of the federal Social Security Act (42 U.S.C. Sec. ~~1395cc(b)(2)~~  
15 *1395cc(b)(2)*). Notwithstanding Section 100171 of the Health and  
16 Safety Code or any other provision of law, any appeal by an  
17 applicant, provider, or billing agent of the imposition of a civil  
18 penalty, exclusion, or other sanction pursuant to this subdivision  
19 shall be in accordance with Section 14043.65, except that where  
20 the action is based upon conviction for any crime involving fraud  
21 or abuse of the Medi-Cal, medicaid, or Medicare programs, or  
22 exclusion by the federal government from the medicaid or  
23 Medicare programs, the action shall be automatic and not subject  
24 to appeal or hearing.

25 (b) In addition, the department may impose the intermediate  
26 sanctions identified in Section 1846 of the Social Security Act (42  
27 U.S.C. Sec. 1395w-2), and its implementing regulations, against  
28 any provider that is a clinical laboratory, as defined in Section  
29 1206 of the Business and Professions Code. The imposition and  
30 appeal of this intermediate sanction shall be in accordance with  
31 Article 8 (commencing with Section 1065) of Chapter 2 of  
32 Division 1 of Title 17 of the California Code of Regulations.

33 (c) (1) In addition, the department may issue a written warning  
34 notice of improper billing or improper cost report computation,  
35 which shall specifically identify the statute, regulation, or rule that  
36 is being violated, to a provider via certified mail, return receipt  
37 requested, whenever a review of the provider's paid claims or a  
38 provider's cost report demonstrate a pattern of improper billing or  
39 improper cost report computation. The review shall not take into  
40 account claims that were denied, or payment reductions. The

1 warning notice shall be in a format that specifically appraises the  
2 provider of the item or service improperly billed, and if applicable,  
3 the deficiencies in the manner in which provider costs were  
4 computed. The warning notice may be issued with annual cost  
5 report audit findings, or in addition to any audit or any other action  
6 that the department is authorized to take. The failure of the  
7 department to exercise its discretion to issue the warning notice  
8 shall not be interpreted and shall not limit its authority to audit or  
9 take any action authorized by law. The warning notice shall  
10 provide the provider with the opportunity to contest the warning  
11 notice and explain to the department the correctness of the  
12 provider's bill or cost report computation. If the department  
13 accepts the provider's explanation, in whole or in part, no further  
14 action related to the notice or part of the notice that the department  
15 accepts as correct shall be taken pursuant to this section.

16 (2) Civil money penalties may be imposed in the following  
17 circumstances:

18 (A) If a provider presents or causes to be presented claims for  
19 payment by the Medi-Cal program that are *either of the following*:

20 (i) Billed improperly, and are for a service or item about which  
21 the provider has received two or more warning notices of improper  
22 billing, the provider may, in addition to any other penalties that  
23 may be prescribed by law, be subject to a civil money penalty of  
24 one hundred dollars (\$100) per claim, or up to two times the  
25 amount improperly claimed for each item or service, whichever is  
26 greater.

27 (ii) For a service or item for which the department solicits  
28 provider costs for use in calculating Medi-Cal reimbursement or  
29 in calculating and assigning Medi-Cal reimbursement rates, the  
30 cost reports relevant to the claims are improperly calculated, and  
31 the provider has received two or more warning notices of improper  
32 cost report computation regarding substantially similar errors, the  
33 provider may, in addition to any other penalties that may be  
34 prescribed by law, be subject to a civil money penalty of one  
35 hundred dollars (\$100) per adjustment by the department to the  
36 costs submitted by the provider, or up to two times the amount  
37 improperly claimed for each item or service, whichever is greater.

38 (B) If a provider presents or causes to be presented claims for  
39 payment by the Medi-Cal program that are *either of the following*:

(i) Billed improperly, and are for a service or item about which the provider has received three or more warning notices of improper billing, or has been assessed a penalty under subparagraph (A), the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one thousand dollars (\$1,000) per claim, or up to three times the amount improperly claimed for each item or service, whichever is greater.

(ii) For a service or item for which the department solicits provider costs for use in calculating Medi-Cal reimbursement or in calculating and assigning Medi-Cal reimbursement rates, and the cost reports relevant to the claims are improperly calculated, and the provider has received three or more warning notices of improper cost report computation regarding substantially similar errors, or has been assessed a penalty under subparagraph (A), the provider may, in addition to any other penalties that may be prescribed by law, be subject to a civil money penalty of one thousand dollars (\$1,000) per adjustment by the department to the costs submitted by the provider, or three times the amount claimed for each item or service, whichever is greater.

(3) Any provider subjected to civil money penalties under paragraph (2) may appeal the decision to assess penalties pursuant to Section 100171 of the Health and Safety Code.

SEC. 386. Section 14132.22 of the Welfare and Institutions Code is amended to read:

14132.22. (a) For purposes of this section, dental restorative materials are limited to composite resin, glass ionomer cement, resin ionomer cement, and amalgam, as described on the Dental Board of California's dental materials factsheet.

(b) A provider of services that includes the provision of dental restorative materials to a beneficiary under this chapter may recommend, after consultation with the beneficiary, a dental restorative material other than the covered benefit of amalgam.

(c) A provider may claim and receive the reimbursement rate for an amalgam restoration when using a different dental restorative material.

SEC. 387. Section 14133.3 of the Welfare and Institutions Code is amended to read:

14133.3. (a) The director shall require fully documented medical justification from providers that the requested services are

1 medically necessary to prevent significant illness, to alleviate  
2 severe pain, to protect life, or to prevent significant disability, on  
3 all requests for prior authorization.

4 (b) For services not subject to prior authorization controls,  
5 offered by noncontract hospitals in closed health facility planning  
6 areas to beneficiaries who were experiencing life-threatening or  
7 emergency situations, but could not be stabilized sufficiently in  
8 order to facilitate being transported to contracting hospitals, the  
9 director shall additionally determine utilization controls ~~which~~  
10 ~~that~~ shall be applied to ~~assure~~ ensure that the health care services  
11 provided and the conditions treated, are medically necessary to  
12 prevent significant illness, alleviate severe pain, to protect life, or  
13 prevent significant disability. These utilization controls shall take  
14 into account those diseases, illnesses, or injuries ~~which~~ that require  
15 preventive health services or treatment to prevent serious  
16 deterioration of health.

17 (c) Nothing in this section shall preclude payment for family  
18 planning services or early and periodic screening, diagnosis, and  
19 treatment services mandated by federal law.

20 (d) For the purposes of this section, a “noncontract hospital”  
21 means a hospital that has not contracted with the department for  
22 the provision of inpatient services pursuant to Article 2.6  
23 (commencing with Section 14081).

24 (e) This section shall not be applied to mental health services  
25 as defined under Division 5 (commencing with Section 5000) or  
26 Section 14021, or any other mental health services funded by the  
27 Medi-Cal program.

28 SEC. 388. Section 14148.91 of the Welfare and Institutions  
29 Code is amended to read:

30 14148.91. (a) No later than March 15 of each year, the  
31 department shall report to the appropriate committees of the  
32 Legislature and the Governor, on a statewide and  
33 county-by-county basis, the most recent data on all of the  
34 following:

35 (1) The number of live births to women receiving prenatal care  
36 in the first trimester, in the second trimester, and in the third  
37 trimester, as well as an analysis of barriers to care to the extent  
38 available.

39 (2) The number of maternal deaths by race and ethnic group.

40 (3) The number of live births by county, race, and ethnic group.



- 1 (4) The number of fetal deaths of infants over 20 ~~weeks~~ *weeks*  
2 gestation by race and ethnic group.
- 3 (5) The number of infant deaths by county, race, and ethnic  
4 group from birth to 28 days postpartum.
- 5 (6) The number of infant deaths by county, race, and ethnic  
6 group from 29 days postpartum to one year.
- 7 (7) The number of live births under 2500 grams and over 4500  
8 grams by race and ethnic group.
- 9 (8) The number of live births under 1500 grams by race and  
10 ethnic group.
- 11 (9) The number of women eligible for prenatal, delivery, or  
12 postpartum care under Subchapter 19 (commencing with Section  
13 1396) of Chapter 7 of Title 42 of the United States Code in the past  
14 year.
- 15 (10) The source of payment for prenatal care and delivery.
- 16 (b) No later than March 15 of each year, the department shall  
17 report to the appropriate committees of the Legislature and the  
18 Governor on a statewide basis, to the extent data are available, all  
19 of the following:
- 20 (1) The number of infants eligible for services under  
21 Subchapter 19 (commencing with Section 1396) of Chapter 7 of  
22 Title 42 of the United States Code.
- 23 (2) The number of newborn babies screened or diagnosed with  
24 Fetal Alcohol Syndrome.
- 25 (3) The number of babies born with drug dependencies, HIV  
26 infection, and sexually transmitted diseases.
- 27 (4) Whether the mother smoked, consumed alcoholic  
28 beverages, or used controlled substances without a prescription,  
29 during pregnancy.
- 30 (c) (1) The department, in consultation with the Legislative  
31 Analyst, shall contract, using appropriate state administrative  
32 funds, with an appropriate entity for a one-time, statistical survey  
33 of the income of mothers, utilizing a statistically valid sample  
34 linked to the birth certificate.
- 35 (2) The State Department of Health Services shall not use more  
36 than one hundred thousand dollars (\$100,000) of administrative  
37 funds for the survey required by paragraph (1).
- 38 (3) The income information required by paragraph (1) shall be  
39 categorized according to the following income categories:





1 (A) Persons whose family income does not exceed 150 percent  
2 of the official federal poverty line.

3 (B) Persons whose family income exceeds 150 percent of the  
4 official federal poverty line but does not exceed 185 percent of the  
5 official federal poverty line.

6 (C) Persons whose family income exceeds 185 percent of the  
7 official federal poverty line but does not exceed 200 percent of the  
8 official federal poverty line.

9 (D) Persons whose family income exceeds 200 percent of the  
10 official federal poverty line but does not exceed 225 percent of the  
11 official federal poverty line.

12 (E) Persons whose family income exceeds 225 percent of the  
13 official federal poverty line.

14 (F) Persons whose family income exceeds 250 percent of the  
15 official federal poverty line level *but* does not exceed 300 percent  
16 ~~of~~ of the official federal poverty line.

17 (d) The department shall, in addition to the information  
18 required by subdivision (a), report on trends in private insurance  
19 coverage of maternity care, to the extent the data is available.

20 SEC. 389. Section 14408 of the Welfare and Institutions Code  
21 is amended to read:

22 14408. (a) Except as otherwise prohibited by law, a  
23 contractor~~which~~ *that* has entered into a contract with the  
24 department pursuant to this chapter may make the benefits known  
25 to potential enrollees by methods approved by the department.

26 (b) No prepaid health plan, marketing representative, or  
27 marketing organization shall engage in marketing activities prior  
28 to written submittal to and approval by the department. All  
29 marketing activities, procedures, methods, and places in which  
30 any activities will be conducted shall be explicitly described in a  
31 marketing plan and approved by the department prior to being used  
32 by a prepaid health plan, marketing representative, or marketing  
33 organization. The marketing plan shall be updated and submitted  
34 for renewed approval on an annual basis. The department may  
35 approve, disapprove, or withdraw approval of any marketing  
36 activity or procedure. The department shall require the  
37 discontinuance of any marketing activity or procedure for which  
38 the department withdraws approval. The conduct of activities or  
39 procedures not included in an approved marketing plan shall

1 constitute a violation of this article and be subject to sanctions in  
2 accordance with Section 14409.

3 The prepaid health plan shall be responsible for all presentations  
4 by ~~their~~ *its* marketing representatives and for their ethical and  
5 professional conduct. The department may withdraw certification  
6 for participation in the program from, and impose marketing  
7 sanctions specified in Section 14409, as applicable, on, marketing  
8 representatives.

9 (c) The marketing plan shall meet the standards established by  
10 the department. The marketing plan shall include, but not be  
11 limited to, an explicit description of the specific marketing  
12 activities, the method of identifying individual enrollments by  
13 marketing representative, and formal measures to monitor  
14 performance of marketing representatives and verify both of the  
15 following:

16 (1) The prepaid health plan's marketing activities and practices  
17 do not violate subdivision (a) of Section 14409.

18 (2) Beneficiaries receive complete and accurate information  
19 about the benefits and limitations of receiving health care services  
20 through the prepaid plan in a manner that considers the  
21 beneficiary's level of comprehension.

22 (d) Each time a marketing representative presents information  
23 about the benefits of prepaid health plan enrollment to a  
24 beneficiary in order to encourage the beneficiary to enroll, the  
25 marketing representative shall leave with the beneficiary printed  
26 information identifying the marketing representative by name and  
27 prepaid health plan represented.

28 (e) All printed or illustrated material prepared by the prepaid  
29 health plan for dissemination to enrollees or to prospective  
30 enrollees shall be submitted to the department prior to ~~such~~  
31 dissemination. The department shall acknowledge receipt of the  
32 printed or illustrated material within five days, and shall approve  
33 or disapprove the material for dissemination within 60 days after  
34 the date of notification that the material has been received. The  
35 department may withdraw approval of the material previously  
36 approved and order its dissemination discontinued. ~~Where~~ *If* the  
37 department notifies the prepaid health plan of its disapproval or  
38 withdrawal of approval, the prepaid health plan shall have the right  
39 to meet and confer with the director or his or her designee and

1 demonstrate the purpose and reasonable basis for the distribution  
2 of ~~such~~ *the* material to enrollees and potential enrollees.

3 (f) (1) Any form of door-to-door or in-person marketing that  
4 coerces or misleads beneficiaries or selectively enrolls  
5 beneficiaries on the basis of their health status is unlawful. In  
6 addition, on or after July 1, 1996, door-to-door solicitation of  
7 Medi-Cal enrollees shall not be permitted.

8 (2) On or after July 1, 1996, the health care options presentation  
9 required by Sections 14016.5 and 14016.6 or the health care  
10 options information required by Sections 14087.305 and 14089  
11 shall be fully operational in counties specified by the director for  
12 expansion of the Medi-Cal managed care program or in counties  
13 where prepaid health plans are contracting with the department  
14 pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36,  
15 14087.38, 14087.96, 14089, and 14089.05. In these counties, on  
16 or after July 1, 1996, no enrollment of beneficiaries by prepaid  
17 health plans shall occur during in-person marketing activities or  
18 during health fairs ~~under~~ *pursuant to* paragraph (5) of subdivision  
19 (f). Enrollment shall be exclusively performed and transmitted  
20 pursuant to the program required by Sections 14016.5, 14016.6,  
21 14087.305, and 14089.

22 (3) In the event the health care options presentation required by  
23 Sections 14016.5 and 14016.6 is not fully operational or the health  
24 care options information required by Sections 14087.305 and  
25 14089 is not fully available, as specified in paragraph (2) of  
26 subdivision (f), the department shall perform the enrollment-only  
27 functions until the health care options presentation or information  
28 is fully operational or available.

29 (4) Nothing in this section shall preclude a prepaid health plan  
30 from responding to inquiries initiated by beneficiaries or potential  
31 beneficiaries.

32 (5) Until July 1, 1996, a prepaid health plan may participate in  
33 an organized community or neighborhood health fair in a public  
34 place only if two or more prepaid health plans are participating, or  
35 if the plan is invited by the sponsor of the fair. If there are not two  
36 or more prepaid health plans providing services to Medi-Cal  
37 beneficiaries in a prepaid health plan's service area, this  
38 subdivision shall not apply. On or after July 1, 1996, a prepaid  
39 health plan may participate in an organized community or  
40 neighborhood health fair in a public place for marketing purposes.

(g) Any prepaid health plan, marketing representative, or marketing organization that violates subdivision (f) shall be subject to the sanctions set forth in subdivision (b) of Section 14409 and shall be guilty of a misdemeanor and subject to a fine of five hundred dollars (\$500) or imprisonment in the county jail for six months, or both, for each violation.

(h) The department shall certify each marketing representative prior to participation in the program in accordance with standards established by the department. Continuing certification for participation in the program shall be contingent upon compliance with this article, as well as guidelines and standards adopted by the department, and may be withdrawn upon their violation, as determined by the department. The department may temporarily decertify any marketing representative when that action is necessary to protect the public welfare or the interests of the Medi-Cal program. Temporary decertification shall be effective immediately upon written notice to the marketing representative and the managed care contractor, and shall remain in effect until the department has made a determination on the merits. Temporary decertification shall be canceled unless the department acts to permanently withdraw certification within 60 days.

(i)

(i) No prepaid health plan shall employ in any capacity relating to the marketing operations of the plan a marketing representative whose certification has been withdrawn. Marketing representatives shall not be recertified for participation until the cause for withdrawal of certification has been corrected to the satisfaction of the department. Proof of correction shall be the sole responsibility of the marketing representative.

SEC. 390. Section 15657 of the Welfare and Institutions Code is amended to read:

15657. Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, neglect as defined in Section 15610.57, or financial abuse as defined in Section 15610.30, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, in addition to all other remedies otherwise provided by law:

(a) The court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to,

1 reasonable fees for the services of a conservator, if any, devoted to  
2 the litigation of a claim brought under this article.

3 (b) The limitations imposed by Section ~~337.34~~ 377.34 of the  
4 Code of Civil Procedure on the damages recoverable shall not  
5 apply. However, the damages recovered shall not exceed the  
6 damages permitted to be recovered pursuant to subdivision (b) of  
7 Section 3333.2 of the Civil Code.

8 (c) The standards set forth in subdivision (b) of Section 3294  
9 of the Civil Code regarding the imposition of punitive damages on  
10 an employer based upon the acts of an employee shall be satisfied  
11 before any damages or attorney's fees permitted under this section  
12 may be imposed against an employer.

13 SEC. 391. Section 15657.03 of the Welfare and Institutions  
14 Code is amended to read:

15 15657.03. (a) An elder or dependent adult who has suffered  
16 abuse as defined in Section 15610.07 may seek protective orders  
17 as provided in this section.

18 (b) For the purposes of this section, "protective order" means  
19 an order that includes any of the following restraining orders,  
20 whether issued ex parte, after notice and hearing, or in a judgment:

21 (1) An order enjoining a party from abusing, intimidating,  
22 molesting, attacking, striking, stalking, threatening, sexually  
23 assaulting, battering, harassing, telephoning, including, but not  
24 limited to, annoying telephone calls as described in Section 653m  
25 of the Penal Code, destroying personal property, contacting, either  
26 directly or indirectly, by mail or otherwise, or coming within a  
27 specified distance of, or disturbing the peace of the petitioner.

28 (2) An order excluding a party from the petitioner's residence  
29 or dwelling, except that this order shall not be issued if legal or  
30 equitable title to, or lease of, the residence or dwelling is in the sole  
31 name of the party to be excluded or is in the name of the party to  
32 be excluded and any other party besides the petitioner.

33 (3) An order enjoining a party from specified behavior that the  
34 court determines is necessary to effectuate orders described in  
35 paragraph (1) or (2).

36 (c) An order may be issued under this section, with or without  
37 notice, to restrain any person for the purpose of preventing a  
38 recurrence of abuse, if an affidavit shows, to the satisfaction of the  
39 court, reasonable proof of a past act or acts of abuse of the  
40 petitioning elder or dependent adult.

(d) (1) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner's residence or dwelling only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the petitioner.

(C) That physical or emotional harm would otherwise result to the petitioner.

(2) ~~In the case in which~~ If a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why a permanent order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted, unless the order is otherwise modified or terminated by the court.

(e) The court may issue, upon notice and a hearing, any of the orders set forth in subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the other party.

(f) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed upon the request of a party, either for three years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

1 (g) Upon the filing of a petition for protective orders under this  
2 section, the respondent shall be personally served with a copy of  
3 the petition, notice of the hearing or order to show cause,  
4 temporary restraining order, if any, and any affidavits in support  
5 of the petition. Service shall be made at least two days before the  
6 hearing. The court may, on motion of the petitioner or on its own  
7 motion, shorten the time for service on the respondent.

8 (h) The court may, upon the filing of an affidavit by the  
9 applicant that the respondent could not be served within the time  
10 required by statute, reissue an order previously issued and  
11 dissolved by the court for failure to serve the respondent. The  
12 reissued order shall be made returnable on the earliest day that the  
13 business of the court will permit, but not later than 20 days or, if  
14 good cause appears to the court, 25 days from the date of  
15 reissuance. The reissued order shall state on its face the date of  
16 expiration of the order.

17 (i) (1) If the person named in a temporary restraining order is  
18 personally served with the order and notice of hearing with respect  
19 to a restraining order or protective order based thereon, but the  
20 person does not appear at the hearing, either personally or by  
21 counsel, and the terms and conditions of the restraining order or  
22 protective order, are identical to the temporary restraining order,  
23 except for the duration of the order, then the restraining order or  
24 protective order may be served on the person by first-class mail  
25 sent to that person at the most current address for the person  
26 available to the court.

27 (2) The judicial form for orders issued pursuant to this  
28 subdivision shall contain a statement in substantially the following  
29 form:  
30

31 “NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF  
32 THE FACE OF THIS FORM INDICATES THAT BOTH  
33 PARTIES WERE PERSONALLY PRESENT AT THE  
34 HEARING WHERE THE ORDER WAS ISSUED. IF YOU  
35 HAVE BEEN PERSONALLY SERVED WITH A TEMPORARY  
36 RESTRAINING ORDER OR EMERGENCY PROTECTIVE  
37 ORDER AND NOTICE OF HEARING, BUT YOU DO NOT  
38 APPEAR AT THE HEARING EITHER IN PERSON OR BY  
39 COUNSEL, AND A RESTRAINING ORDER OR  
40 PROTECTIVE ORDER IS ISSUED AT THE HEARING THAT



1 DOES NOT DIFFER FROM THE PRIOR TEMPORARY  
2 RESTRAINING ORDER OR EMERGENCY PROTECTIVE  
3 ORDER, A COPY OF THE ORDER WILL BE SERVED UPON  
4 YOU BY MAIL AT THE FOLLOWING ADDRESS \_\_\_\_\_. IF  
5 THAT ADDRESS IS NOT CORRECT OR YOU WISH TO  
6 VERIFY THAT THE TEMPORARY OR EMERGENCY  
7 ORDER WAS MADE PERMANENT WITHOUT  
8 SUBSTANTIVE CHANGE, CALL THE CLERK OF THE  
9 COURT AT \_\_\_\_\_.”

10

11 (j) (1) The court shall order the petitioner or the attorney for  
12 the petitioner to deliver, or the clerk of the court to mail, a copy of  
13 an order issued under this section, or a reissuance, extension,  
14 modification, or termination of the order, and any subsequent  
15 proof of service, by the close of the business day on which the  
16 order, reissuance, extension, modification, or termination was  
17 made, to each local law enforcement agency designated by the  
18 petitioner or the attorney for the petitioner having jurisdiction over  
19 the residence of the petitioner, and to any additional law  
20 enforcement agencies within the court’s discretion as are requested  
21 by the petitioner. Each appropriate law enforcement agency shall  
22 make available information as to the existence and current status  
23 of these orders to law enforcement officers responding to the scene  
24 of reported abuse.

25 (2) An order issued under this section shall, on request of the  
26 petitioner, be served on the respondent, whether or not the  
27 respondent has been taken into custody, by any law enforcement  
28 officer who is present at the scene of reported abuse involving the  
29 parties to the proceeding. The petitioner shall provide the officer  
30 with an endorsed copy of the order and a proof of service which  
31 the officer shall complete and send to the issuing court.

32 (3) Upon receiving information at the scene of an incident of  
33 abuse that a protective order has been issued under this section, or  
34 that a person who has been taken into custody is the respondent to  
35 that order, if the protected person cannot produce a certified copy  
36 of the order, a law enforcement officer shall immediately attempt  
37 to verify the existence of the order.

38 (4) If the law enforcement officer determines that a protective  
39 order has been issued, but not served, the officer shall immediately  
40 notify the respondent of the terms of the order and shall at that time



1 also enforce the order. Verbal notice of the terms of the order shall  
2 constitute service of the order and is sufficient notice for the  
3 purposes of this section and for the purposes of Section 273.6 of  
4 the Penal Code.

5 (k) Nothing in this section shall preclude either party from  
6 representation by private counsel or from appearing on the party's  
7 own behalf.

8 (l) There is no filing fee for a petition, response, or paper  
9 seeking the reissuance, modification, or enforcement of a  
10 protective order filed in a proceeding brought pursuant to this  
11 section.

12 (m) (1) Fees otherwise payable by a petitioner to a law  
13 enforcement agency for serving an order issued under this section  
14 may be waived in any case in which the petitioner has requested  
15 a fee waiver on the initiating petition and has filed a declaration  
16 that demonstrates, to the satisfaction of the court, the financial  
17 need of the petitioner for the fee waiver. The declaration required  
18 by this subdivision shall be on one of the following forms:

19 (A) The form formulated and adopted by the Judicial Council  
20 for litigants proceeding in forma pauperis pursuant to Section  
21 68511.3 of the Government Code, but the petitioner is not subject  
22 to any other requirements of litigants proceeding in forma  
23 pauperis.

24 (B) Any other form that the Judicial Council may adopt for this  
25 purpose pursuant to subdivision ~~(p)~~ (r).

26 (2) In conjunction with a hearing pursuant to this section, the  
27 court may make an order for the waiver of fees otherwise payable  
28 by the petitioner to a law enforcement agency for serving an order  
29 issued under this section.

30 (n) The prevailing party in any action brought under this  
31 section may be awarded court costs and attorney's fees, if any.

32 (o) (1) An order issued pursuant to this section shall prohibit  
33 the person subject to it from owning, possessing, purchasing,  
34 receiving, or attempting to purchase or receive, a firearm.

35 (2) Paragraph (1) shall not apply to a case consisting solely of  
36 financial abuse unaccompanied by force, threat, harassment,  
37 intimidation, or any other form of abuse.

38 (3) The court shall order a person subject to a protective order  
39 issued under this section to relinquish any firearms he or she owns

1 or ~~possess~~ *possesses* pursuant to Section 527.9 of the Code of Civil  
2 Procedure.

3 (4) Every person who owns, possesses, purchases, or receives,  
4 or attempts to purchase or receive a firearm while the protective  
5 order is in effect is punishable pursuant to subdivision (g) of  
6 Section 12021 of the Penal Code.

7 (p) Any willful disobedience of any temporary restraining  
8 order or restraining order after hearing granted under this section  
9 is punishable pursuant to Section 273.6 of the Penal Code.

10 (q) This section does not apply to any action or proceeding  
11 covered by Title 1.6C (commencing with Section 1788) of the  
12 Civil Code, by Chapter 3 (commencing with Section 525) of the  
13 Code of Civil Procedure, or by Division 10 (commencing with  
14 Section 6200) of the Family Code. Nothing in this section shall  
15 preclude a petitioner's right to use other existing civil remedies.

16 (r) The Judicial Council shall promulgate forms and  
17 instructions therefor, rules for service of process, scheduling of  
18 hearings, and any other matters required by this section. The  
19 petition and response forms shall be simple and concise.

20 SEC. 392. Section 16121.05 of the Welfare and Institutions  
21 Code is amended to read:

22 16121.05. (a) The department may recover any  
23 overpayments of financial assistance under the Adoption  
24 Assistance Program, and shall develop regulations that establish  
25 the means to recoup them, including an appropriate notice of  
26 action and appeal rights, when the department determines either of  
27 the following applies:

28 (1) The adoptive parents are no longer legally responsible for  
29 the support of the child.

30 (2) The child is no longer receiving support from the adoptive  
31 family.

32 (3) The adoptive family has committed fraud in its application  
33 for, or reassessment of, the adoption assistance.

34 (b) Children on whose behalf an adoption assistance agreement  
35 had been executed prior to October 1, 1992, shall continue to  
36 receive adoption assistance in accordance with the terms of that  
37 agreement.

38 (c) Payment shall begin on or after the effective date of an  
39 adoption assistance agreement, or a deferred adoption assistance  
40 agreement, or a final decree of adoption, provided *that* the

1 adoption assistance agreement has been signed by all required  
2 parties prior to or at the time the adoption decree is issued by the  
3 court.

4 (d) Children on whose behalf an aid for adoption of children  
5 agreement had been executed prior to October 1, 1982, shall  
6 continue to receive aid for adoption of children benefits in  
7 accordance with the terms of that agreement. This aid for adoption  
8 of children agreement may be renewed, provided *that* total  
9 benefits do not exceed five years. Prior to the end of the ~~five-year~~  
10 *five-year* period, if there is a continuing need related to a chronic  
11 health condition of the child that necessitated the initial financial  
12 assistance, the time period for which it may be given shall be  
13 determined by the department or the agency, but shall not extend  
14 past the time that the child reaches 18 years of age. Prior to the  
15 expiration of the extension period, if there is a continuing need, a  
16 parent may petition the department or the designated licensed  
17 adoption agency for a new period of termination. The department  
18 or the agency shall make its determination regarding the financial  
19 ability of the parents to meet the continuing medical needs of the  
20 child's health condition at the time of adoption, taking into  
21 consideration community resources.

22 SEC. 393. Section 16501.6 of the Welfare and Institutions  
23 Code is amended to read:

24 16501.6. (a) It is the intent of the Legislature for the State  
25 Department of Social Services to enhance the Child Welfare  
26 Services Case Management System to include information  
27 concerning the level of care required, educational  
28 accomplishments, and health history of children placed in foster  
29 care. If appropriate, this enhancement could be made after the  
30 system is operational statewide as required in Section 16501.5.

31 (b) The department shall conduct a study to examine the most  
32 efficient methods of collecting and maintaining all of the  
33 following data for each child in foster care:

34 (1) The names and addresses of the child's health and  
35 educational providers.

36 (2) The child's grade level performance.

37 (3) The child's school record.

38 (4) Assurances that the child's placement in foster care takes  
39 into account proximity to the school in which the child is enrolled  
40 at the time of placement.

1 (5) A record of the child's immunizations.

2 (6) The child's known medical problems.

3 (7) The child's medications.

4 (8) Any other relevant level of care, health, and education  
5 information concerning the child as determined appropriate by the  
6 department.

7 ~~(b)~~

8 (c) In conducting its study, the department shall, as required,  
9 examine county health passport systems for possible replication on  
10 a statewide basis and consult with other state departments, county  
11 associations, and provider groups.

12 (d) By February 15, 1992, the department shall submit a report  
13 to the appropriate policy and fiscal committees of the Legislature  
14 on the results of its study. The department shall include the  
15 following in its report:

16 (1) Recommendations for coordinating data collection among  
17 local child health and disability prevention programs, other health  
18 care providers, county welfare departments, schools, and other  
19 agencies providing services for foster children.

20 (2) Recommendations for the interfacing with any alternative  
21 system recommended pursuant to paragraph (1) with the mental  
22 health assessment required by Section 5407, and with other  
23 requirements of law.

24 (e) The report required by subdivision (d) shall address the  
25 feasibility, timeframe, and estimated costs of doing either of the  
26 following:

27 (1) Incorporating the data specified in subdivision (b) in the  
28 Child Welfare Services Case Management System.

29 (2) Implementing an alternative system ~~which~~ *that* is more  
30 appropriate for the collection and maintenance of the data  
31 specified in subdivision (b).

32 SEC. 394. Section 18358 of the Welfare and Institutions Code  
33 is amended to read:

34 18358. The definitions contained in this section shall govern  
35 the construction of this chapter, unless the context requires  
36 otherwise:

37 (a) "Department" means the State Department of Social  
38 Services.

39 (b) "Eligible children" means children who meet all of the  
40 following conditions:

(1) Children who are emotionally disturbed, as evidenced by a history ~~which~~ *that* may include, but is not limited to, all of the specific behavior management problems:

- (A) Lying.
- (B) Stealing.
- (C) Verbal or physical aggression.
- (D) Unacceptable sexual behavior.
- (E) Attempts at self-mutilation or suicide.
- (F) Defiant and oppositional behavior.

(2) Children who, as a result of their emotional disturbance, have been either:

- (A) Placed in a group home with a rate classification level of 12 or higher pursuant to Section 11462.
- (B) Assessed by the child's county interagency review team as at imminent risk of psychiatric hospitalization or placement in a group home with a rate classification level of 12 or higher pursuant to Section 11462.

(3) Children who have successfully completed the group home program, except children on probation or otherwise in the custody of the juvenile court for any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

~~(B)~~

(4) Any child who is voluntarily placed in a group home with a rate classification level of 12 or higher pursuant to Section 7572.5 of the Government Code.

SEC. 395. Section 1 of Chapter 68 of the Statutes of 2003 is amended to read:

Sec. 1. For purposes of this chapter, the following terms have the following meanings:

(a) "BCDC" means the San Francisco Bay Conservation and Development Commission established pursuant to Section 66620 of the Government Code.

(b) "Bay jurisdiction" means the jurisdiction, powers, and duties of BCDC pursuant to Title 7.2 (commencing with Section 66600) of the Government Code within the area defined in subdivision (a) of Section 66610 of the Government Code.

(c) "Bay Plan" means the San Francisco Bay Plan as adopted and administered by BCDC pursuant to Title 7.2 (commencing with Section 66600) of the Government Code, including all amendments thereto.

(d) “Boundary of the Port of San Francisco” means that line defining the boundary of “Parcel A” in the description of the lands transferred in trust to the City and County of San Francisco pursuant to Chapter 1333 of the Statutes of 1968, recorded on May 14, 1976, in Book C169, pages 573 to 664, inclusive, in the City and County of San Francisco ~~Recorder’s~~ *Assessor-Recorder’s* Office.

(e) “Brannan Street Wharf” means a major San Francisco waterfront park in the area of Piers 34 and 36, as identified in the Special Area Plan.

(f) “Burton Act” means Chapter 1333 of the Statutes of 1968, as amended.

(g) “Burton Act trust” means the statutory trust imposed by the Burton Act (Chapter 1333 of the Statutes of 1968, as amended), pursuant to which the state conveyed to the City and County of San Francisco, in trust, by transfer agreement, and subject to certain terms, conditions, and reservations, the state’s interest in certain tide and submerged lands.

(h) “City” means the City and County of San Francisco.

(i) “McAteer–Petris Act” means Title 7.2 (commencing with Section ~~66000~~ 66600) of the Government Code.

(j) “Public trust” or “trust” means the public trust for commerce, navigation, and fisheries.

(k) “Port” means the City and County of San Francisco acting by and through the San Francisco Port Commission.

(l) “San Francisco Bay” means those areas defined in Section 66610 of the Government Code.

(m) “San Francisco waterfront” means those portions of the area transferred to the ~~port~~ *Port* pursuant to the Burton Act that also lie within the area defined in subdivisions (a) and (b) of Section 66610 of the Government Code.

(n) “Seawall Lot 330” means that parcel of property located in San Francisco identified on that certain map entitled SUR 790, and shown on Page 318 of the City and County of San Francisco 100 Scale Ownership Maps, which is on file with the city’s Bureau of Street Use and Mapping.

(o) “Shoreline band jurisdiction” means the jurisdiction, powers, and duties of BCDC pursuant to Title 7.2 (commencing with Section 66600) of the Government Code to regulate uses within the area defined in subdivision (b) of Section 66610 of the



Government Code to ensure, in part, maximum feasible public access, as prescribed in Section 66632.4 of the Government Code.

(p) “Special Area Plan” means the San Francisco Waterfront Special Area Plan, dated July 20, 2000, adopted by BCDC, as amended from time to time.

(q) “Street” means those lands located within the South Beach/China Basin Planning area of the San Francisco waterfront at Seawall Lot 330, and also lying within Parcel A of those lands transferred to the City and County of San Francisco pursuant to the Burton Act, as recorded May 14, 1969, in Book C 169 at Pages 573 to 664, inclusive, in the San Francisco ~~Recorder’s office~~ *Assessor-Recorder’s Office*, as more particularly described as that portion of Main Street, located between Bryant Street and the Embarcadero, vacated per Ordinance 14-93 on January 11, 1993, on file with the San Francisco Bureau of Street Use and Mapping, in Book 10, Page 94. All streets and street lines described in the preceding sentence are in accordance with that certain map entitled SUR 790, and shown on Page 318 of the City and County of San Francisco 100 Scale Ownership Maps, on file with the City’s Bureau of Street Use and Mapping.

(r) “Waterfront Land Use Plan” means the Waterfront Land Use Plan, including the Waterfront Design and Access Element, adopted by the ~~port~~ *Port* pursuant to Resolution No. 97–50, as amended from time to time.

SEC. 396. Section 13 of Chapter 673 of the Statutes of 2003 is amended to read:

Sec. 13. (a) The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, except as provided in subdivision (b) or (c).

(b) In the event that the provisions of Section 2160.1 of the Labor Code are held invalid and this action is affirmed on final appeal, an employer may qualify for a full credit for those amounts spent for providing or reimbursing health care benefits, allowable by state law as a deductible business expense if the amount spent equals or exceeds the lower of the cost for *the* Healthy Families Program or 150 percent of the cost for Medi-Cal 1931(b) coverage. In no instance shall the amount of the credit exceed the amount of the fee that would otherwise have been paid. The

1 Employment Development Department shall specify the manner  
2 and means of submitting proof to obtain the credit.

3 (c) In the event that Chapter 8.7 (commencing with ~~See~~  
4 *Section* 2120) of Division 2 of the Labor Code is held invalid,  
5 Article 3.11 (commencing with Section 1357.20) of Chapter 2.2  
6 of Division 2 of the Health and Safety Code and Chapter 8.1  
7 (commencing with Section 11760) of Part 2 of Division 2 of the  
8 Insurance Code shall become inoperative.

9 SEC. 397. Any section of any act enacted by the Legislature  
10 during the 2004 calendar year that takes effect on or before January  
11 1, 2005, and that amends, amends and renumbers, adds, repeals  
12 and adds, or repeals a section that is amended, amended and  
13 renumbered, added, repealed and added, or repealed by this act,  
14 shall prevail over this act, whether that act is enacted prior to, or  
15 subsequent to, the enactment of this act. The repeal, or repeal and  
16 addition, of any article, chapter, part, title, or division of any code  
17 by this act shall not become operative if any section of any other  
18 act that is enacted by the Legislature during the 2004 calendar year  
19 and takes effect on or before January 1, 2005, amends, amends and  
20 renumbers, adds, repeals and adds, or repeals any section  
21 contained in that article, chapter, part, title, or division.

